

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ERIC C. DARDEN, AS) CASE NO. 4:15-CV-221-A
ADMINISTRATOR OF THE ESTATE)
OF JERMAINE DARDEN,)
Plaintiff,)
VERSUS) FORT WORTH, TEXAS
W.F. SNOW AND J. ROMERO,) FEBRUARY 11, 2020
Defendants.) 9:07 A.M.

VOLUME 3 OF 4
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

A P P E A R A N C E S :

FOR THE PLAINTIFF: MR. DARYL WASHINGTON
Washington Law Firm, PC
325 N. Saint Paul Street, Suite 3950
Dallas, Texas 75201
Telephone: 214.880.4883

MR. MATTHEW J. KITA
P.O. Box 5119
Dallas, Texas 75208
Telephone: 214.699.1863

FOR THE DEFENDANT: MR. KENNETH E. EAST
W.F. Snow Law Office of Kenneth E. East
306 W. 7th Street, Suite 600
Fort Worth, Texas 76102
Telephone: 817.788.1111

1 FOR THE DEFENDANT: MR. D. LEE THOMAS, JR.
J. Romero Law Office of D. Lee Thomas
2 507 West Central Avenue
Fort Worth, Texas 76164-9135
3 Telephone: 817.625.8866

4 COURT REPORTER: MS. DEBRA G. SAENZ, CSR, RMR, CRR
5 501 W. 10th Street, Room 424
Fort Worth, Texas 76102
6 Telephone: 817.850.6661
E-Mail: Debbie.saenz@yahoo.com
7

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P R O C E E D I N G S

February 11, 2020 - 9:07 a.m.

(Jury not present)

COURT SECURITY OFFICER: All rise.

(Judge enters)

COURT SECURITY OFFICER: Please be seated.

THE COURT: Mr. Washington, I understand from a message I received from the court reporter that you have something you wanted to discuss before the jury came in this morning?

MR. WASHINGTON: Yes, sir, Your Honor.

THE COURT: Okay. And what is that?

MR. WASHINGTON: Your Honor, there are a couple of issues. I'll start with the first being the autopsy report that was admitted on yesterday --

THE COURT: Yes.

MR. WASHINGTON: -- afternoon.

Your Honor, as the Court would recall, we were subject to strong -- strong Motion in Limine by this Court that indicated that once the video reached a certain point, we could have no discussions, we could not let the video go to show Mr. Darden's condition, et cetera.

So in this autopsy report --

THE COURT: I don't know for sure what you just said. What did you just say?

1 MR. WASHINGTON: We had to stop the body cam video
2 at the point that it showed Mr. Darden in handcuffs.

3 THE COURT: Okay.

4 MR. WASHINGTON: Right? The Court would not allow
5 us to go past that point.

6 THE COURT: Okay.

7 MR. WASHINGTON: So, in the autopsy report, there is
8 detailed -- there is detailed description of that video, and,
9 in fact, Your Honor, on page 3 --

10 THE COURT: Well, let my find the autopsy report, if
11 I can. It's Exhibit 145, I believe?

12 MR. WASHINGTON: Yes, sir.

13 THE COURT: By the way, speaking of the videos, I
14 believe one or two of the videos was received in evidence.
15 Does that have in it parts that the Court ordered would not be
16 shown to the jury, the ones that were received in evidence?

17 MR. WASHINGTON: No, sir, it has none of that.

18 THE COURT: Okay. Does somebody have a copy of the
19 autopsy report I can look at to save me having to go through a
20 pile of stuff up here?

21 MR. WASHINGTON: Sure. We'll get you one copy. May
22 I approach?

23 THE COURT: Okay. Hand me up the copy, and then
24 indicate to me the part you're talking about.

25 MR. WASHINGTON: Sure. Your Honor, starting with

1 page 3 of the autopsy report.

2 *THE COURT:* The comment?

3 *MR. WASHINGTON:* Yes, sir. If you go down to
4 the -- almost the third paragraph to the end.

5 *THE COURT:* Third sentence from the end?

6 *MR. WASHINGTON:* Yeah, it starts with following
7 this.

8 *THE COURT:* Okay.

9 *MR. WASHINGTON:* And in this, Your Honor, it says:
10 Following this, he was placed in a seated position. At this
11 time, he was awake. And that is -- if we were allowed, Your
12 Honor, in the video to show it, which we could not show that,
13 it clearly shows that Mr. Darden is dead.

14 *THE REPORTER:* Hold on just a second. We have a
15 juror coming in the back door.

16 *JUROR:* I don't know how to go to the jury room.

17 (Juror exits courtroom)

18 *THE COURT:* What was the -- what was the ruling that
19 resulted in you not showing that part of the video? I don't
20 recall that ruling.

21 *MR. WASHINGTON:* I think, and I can look for it,
22 they objected to the fact that it was prejudicial, and that we
23 should not be allowed to show that part of the video.

24 *THE COURT:* Mr. East, do you recall that ruling?

25 *MR. EAST:* Yes, Your Honor. You had ruled that

1 because they had no cause of action for medical care related
2 claims, that that was all argument about a claim that didn't
3 exist, so the Court has excluded that and I agree.

4 And in response to this, plaintiff's counsel
5 approached us a few minutes ago and said, would we agree to
6 redact this sentence. Even though they didn't object to it
7 coming in for that ground at the time, we don't have any
8 problem redacting this sentence he's talking about, if the
9 Court pleases. It wasn't discussed in front of the jury, and
10 they haven't seen this document yet, so if it would help
11 alleviate the concern, we can redact that one sentence out.

12 MR. WASHINGTON: Your Honor, as the Court -- as
13 Mr. East was calling Dr. Greenberg up as his expert, and
14 indicated that she was his expert that was called, we did not
15 put this autopsy report into evidence --

16 THE COURT: Do you want to take out the sentence
17 that you find objectionable?

18 MR. WASHINGTON: No, there is a number of things.
19 This is just one paragraph, Your Honor. There are a number of
20 things that's contained in this particular report that is
21 contrary to the order, and if Mr. East is calling
22 Dr. Greenberg --

23 THE COURT: What is the other sentence?

24 MR. WASHINGTON: Now, if you go to F on page 1, Your
25 Honor, and, again, this is in direct controverse to

1 Dr. Greenberg on F. It states that hospital notes indicated
2 that --

3 *THE COURT:* What subparagraph are you talking about?

4 *MR. WASHINGTON:* I'm sorry, under the findings on
5 page 1, Your Honor, of the autopsy report.

6 *THE COURT:* Yes. What subparagraph --

7 *MR. WASHINGTON:* F.

8 *THE COURT:* -- A, B, C --

9 *MR. WASHINGTON:* F.

10 *THE COURT:* Okay. I see what you're talking about.

11 *MR. WASHINGTON:* Yes.

12 *MR. EAST:* Your Honor, may I respond?

13 *MR. WASHINGTON:* So this is -- Your Honor --

14 *THE COURT:* Mr. East, do you have a response to his
15 request that that be stricken from the autopsy report?

16 *MR. EAST:* I do, Your Honor. That's a different
17 matter. That's talking about during the second taser
18 deployment. That part of the video is in evidence, and it's
19 clear, well after the second taser deployment, he's still
20 pulling his hands out from the officers. That's very clear.
21 We can argue about that with the jury, about what's shown on
22 the video, but that part's in evidence. That's within the
23 video that is admitted.

24 *MR. WASHINGTON:* And, Your Honor, to handle this --
25 and we've talked to Mr. East -- when Mr. East calls

1 Dr. Greenberg, we have a few questions specific to this, this
2 autopsy report, that we would like to cover up with
3 Dr. Greenberg because she's given this jury a perception that
4 all these -- Mr. Darden died basically at the hospital and it
5 was due to cardio arrest and due to these preexisting
6 conditions, and this is totally contrary to the information
7 that is in the autopsy report, and the autopsy report --

8 *THE COURT:* Okay. This report is in evidence
9 without objection, as I recall.

10 *MR. WASHINGTON:* No, the Court indicated, Your
11 Honor, that -- Mr. East talked to the Court and the Court said
12 we did not have to relodge our objections, the pretrial
13 objections that the Court ruled on already. So these were
14 objections that we have already took up with the Court in the
15 pretrial hearing, and the Court said we did not have to
16 relodge those objections.

17 I did stand up and when Mr. East attempted to bring
18 this autopsy report, I objected again, but we are -- our
19 plans, Your Honor, is a short, on rebuttal, if necessary, to
20 ask a few questions of Dr. Greenberg. We think that that
21 would clarify any issue and this jury would not have any
22 misconception about what's in --

23 *THE COURT:* What did you want to show on
24 the -- apparently you wanted to show something on the video
25 because of what this said.

1 What do you want to show on the video?

2 *MR. WASHINGTON:* The video needs to go past the
3 point -- because we had to freeze at the point where
4 Mr. Darden was in a seated position, but if that video -- and
5 it has nothing to do with any failure to render medical claim
6 that Mr. East is talking about, Your Honor, and as the Court
7 knows, we have punitive damages that we're also seeking, and
8 we have to be able to show the conduct of the officers.

9 But if that video goes right past when he's in a
10 seated position, Your Honor, it will show, after the second
11 taser deployment, Mr. Darden was dead, and when he got into
12 that seated position, and was just basically placed into that
13 seated position, he was dead. But we had to stop that -- to
14 that point of the video but whether this --

15 *THE COURT:* What is past where you stopped that you
16 think is relevant?

17 *MR. WASHINGTON:* The part where you will be able to
18 see clearly that, after the second taser deployment, that he
19 was dead, because when you go through this --

20 *THE COURT:* How much are you talking about from a
21 time standpoint?

22 *MR. WASHINGTON:* The whole video, Your Honor, is
23 not -- I don't even think it's over 3 minutes, the total
24 video, so it was probably less than 10 seconds or so that was
25 taken out of the video.

1 *THE COURT:* Well, what's the problem with him
2 showing that to the jury?

3 *MR. EAST:* Your Honor, this case has been prepared
4 based on the Court's, numerous times, ruling that anything
5 after he's handcuffed is irrelevant to any claim in this case.
6 After he's tased the second time, there is plenty shown on the
7 video of him continuing to struggle all the way through the
8 time he's handcuffed and put into a seated position. There is
9 nothing beyond that that has anything to do with whether or
10 not he was unresponsive during the second taser deployment.
11 That is clear from the video that's already --

12 *THE COURT:* Well, Mr. Washington thinks it's
13 important to establish that he was dead as soon as the
14 struggle ended.

15 *MR. EAST:* Because what he wants to do is to
16 backdoor in claims that the officers weren't responsive to his
17 medical needs, a legal claim that he's never brought in this
18 case.

19 *THE COURT:* Well, he's not going to make that
20 argument or contention.

21 *MR. WASHINGTON:* That's not even my contentions
22 whatsoever, and I've made this clear, Your Honor. We are at
23 this point, right now, today, because Mr. East opened the door
24 with this autopsy report that he knew had information that
25 discusses what goes past -- what went past the part that the

1 Court said we were not to get into.

2 MR. EAST: Your Honor, that's an objection that has
3 never been made, and it's fixable by striking that one
4 sentence. The only sentence in there that he's pointed out
5 that talks about anything after the -- after he was seated up,
6 whether he was still responsive or not, is that one sentence.
7 It's never come before the jury. We can strike that sentence.
8 This whole problem is solved.

9 Furthermore, we don't have any videos to present to
10 the Court that don't show the van ride over and everything
11 long after the incident was over. We have the two videos that
12 we've both agreed would be the only videos we'd play in this
13 case. Before this trial started, we talked to the Court and
14 said, these are the two videos, we've agreed, the only two
15 videos that need to be shown.

16 MR. WASHINGTON: And, Your Honor, if you go to page
17 15 of this autopsy report -- and, again, this is an
18 investigative report that we objected to, but just to show the
19 Court the inconsistencies, we would have to basically redact
20 all this entire report.

21 But if you look at details of the incident, Your
22 Honor, the second paragraph --

23 THE COURT: Description of body, or what are you
24 talking about?

25 MR. WASHINGTON: Where it says, Detective Roloff.

1 THE COURT: You're talking about page 15?

2 MR. WASHINGTON: Yes, sir.

3 THE COURT: And what heading are you talking about?

4 MR. WASHINGTON: The last paragraph, the heading
5 states, details of incident.

6 THE COURT: Okay. And what sentence in that --

7 MR. WASHINGTON: Second paragraph, first sentence.
8 It's going to be the first and second sentence of that last
9 paragraph.

10 THE COURT: The sentence that starts with Micki
11 Hayden?

12 MR. WASHINGTON: No, sir. The one that started with
13 Detective Roloff. I may be pronouncing his name wrong.

14 THE COURT: Well, what part of that paragraph are
15 you finding objectionable?

16 MR. WASHINGTON: Your Honor, and that's -- this was
17 a report that had Dr. Peerwani, the medical examiner's
18 reference in there, and this is when we objected to
19 Dr. Greenberg testifying that -- indicating that she had
20 nothing to do with this report, but it states: The decedent
21 was ordered to the ground inside the residence by officers, to
22 which he initially complied.

23 All right. So what Mr. East have been doing the
24 entire time with Dr. Greenberg, who did not prepare this
25 report, this jury has been hearing that Jermaine --

1 *THE COURT:* What part -- tell me what you're
2 referring to that you're objecting to. Instead of just
3 arguing, tell me --

4 *MR. WASHINGTON:* Well, the first --

5 *THE COURT:* Tell me what sentence you're objecting
6 to.

7 *MR. WASHINGTON:* I'm sorry. We do not object to
8 that sentence. We object to the summary of the findings to
9 say that the findings are inconsistent with this -- what
10 Dr. Greenberg testified on page 1. If you look at -- and I
11 apologize, Your Honor, for being --

12 *THE COURT:* Mr. Washington, it seems to me what
13 you're doing is arguing that a document that's already in
14 evidence ought to be done something to, I don't know what
15 you're talking about, because it's inconsistent with your
16 position in the case, and you can make that argument to the
17 jury in your final statement.

18 *MR. WASHINGTON:* Right. I understand. And in all
19 fairness to the Court, Your Honor, you did ask Dr. Greenberg
20 yesterday -- and I'm not sure if you asked her or Mr. East
21 asked her -- did she sign and take care of this report, and
22 she represented to the Court that she did.

23 And the investigator from the Tarrant County Medical
24 Examiner indicated that this report was -- I mean, that
25 Mr. Darden complied. But if you go on page 1 of the findings,

1 Your Honor, that's sticking out to the jury --

2 THE COURT: Well, are you saying that there's
3 already some evidence that this report is not correct?

4 MR. WASHINGTON: And Dr. Greenberg knew this, and
5 this is why, Your Honor, the only way we can cure this when
6 Mr. East brings this on, which we plan to do either in
7 rebuttal, bringing her back on as rebuttal or doing
8 cross-examination, so that there's no confusion to this jury,
9 is to discuss -- because they have designated her as their
10 expert, so I would like to be able to have the opportunity on
11 a -- whether it's in rebuttal or to have Dr. Greenberg address
12 these issues, so that this jury, Your Honor, in addition to
13 the redactions that we will agree to, that this jury is not
14 taking these documents at the back and --

15 THE COURT: Okay. So what you want is an
16 opportunity to cross-examine her about these subjects you're
17 now telling me about?

18 MR. WASHINGTON: Yes, sir.

19 THE COURT: I don't know why he can't do that. Do
20 you have any reason to think he can't?

21 MR. EAST: She's already testified. He called her
22 as his witness. He's complaining that we designated her as an
23 expert --

24 THE COURT: Well, you're going to use her, too,
25 aren't you?

1 MR. EAST: I don't need anything else out of her,
2 Your Honor.

3 MR. THOMAS: We're not planning to call her again,
4 Your Honor.

5 MR. EAST: We're done with her. He designated some
6 experts and he didn't --

7 THE COURT: Well, he's not through. Is she still
8 available to be called back?

9 MR. EAST: She is, Your Honor.

10 THE COURT: You can just put her back on the stand
11 and ask her what you want to ask her, I suppose.

12 MR. WASHINGTON: Yes.

13 THE COURT: As long as you don't go over what you've
14 already been over. We've done a lot of repetitive --

15 MR. WASHINGTON: Yes, I just have a short list of
16 questions or findings, Your Honor, that's in this report, and
17 just a list of questions that we --

18 THE COURT: Okay. If you want to ask her about
19 certain parts of the report as that -- I don't know why you
20 can't, unless Mr. East has a good reason why you can't.

21 MR. EAST: Well, I want to be clear, Your Honor. If
22 we're going to redact that sentence, then he can't talk to her
23 about that sentence.

24 THE COURT: Well, I don't think we're -- I don't
25 think the decision has been made to redact it.

1 MR. EAST: Well, if he talks to her -- if he
2 intentionally talks to her in front of the jury about things
3 that happened after Mr. Darden -- the use of force was
4 completed, he is, himself, trying to get in evidence that this
5 Court has already said cannot come in.

6 The only problem he's pointed out is that there's
7 one sentence in this report that talks about something after
8 the fact, and we can redact that and solve the problem.

9 MR. WASHINGTON: Your Honor, just to clarify --

10 MR. EAST: And he slept overnight and thought of
11 more questions he wants to ask Dr. Greenberg, and he's already
12 called her and passed her.

13 MR. WASHINGTON: Your Honor, with all due respect,
14 Dr. Greenberg represented to this Court, under oath -- and we
15 take people's testimony that they give to this Court -- I went
16 back, Your Honor. Dr. Greenberg represented to this Court
17 that there was a supplemental autopsy report that was prepared
18 in this case.

19 MR. EAST: There was never a supplemental autopsy.

20 MR. WASHINGTON: She testified and the Court
21 asked -- they said, well, why don't you have this supplemental
22 autopsy report into the examination, when the Court asked her
23 that question and --

24 THE COURT: I think it ended up that there wasn't
25 such a thing.

1 MR. WASHINGTON: Well, she said there was.

2 MR. EAST: Mr. Washington told the Court there's no
3 supplemental report, Your Honor.

4 MR. WASHINGTON: I said, we never received and the
5 record will reflect, Your Honor, that she said that there
6 was --

7 THE COURT: I heard you say there was no
8 supplemental report.

9 MR. WASHINGTON: Right. I say we didn't receive
10 any.

11 MR. EAST: That's not what he said, Your Honor.

12 MR. WASHINGTON: Well, the record --

13 THE COURT: You want to put her back on and ask her
14 if there really was a supplemental report and does she have a
15 copy of it?

16 MR. WASHINGTON: Yes.

17 THE COURT: I thought we had already gone through
18 that.

19 MR. WASHINGTON: No. And, Your Honor, if I've made
20 a mistake of what I said, we can look at the record for
21 clarity, but she indicated that there was a supplemental
22 autopsy report.

23 THE COURT: Okay. What sentence is it that you're
24 indicating you're willing to redact?

25 MR. EAST: It was the one he pointed out on page 3

1 of the report, three-quarters of the way down, beginning with
2 following this, comma.

3 *THE COURT:* Following this, he was placed in a
4 seated position and he was awake?

5 *MR. EAST:* Yes, Your Honor.

6 *THE COURT:* However, subsequently became
7 unresponsive.

8 *MR. WASHINGTON:* Yeah, that's not --

9 *THE COURT:* It seems to me like redacting that
10 sentence from the report should solve the issue that you're
11 working on now.

12 *MR. WASHINGTON:* No, that definitely will not --

13 *THE COURT:* Well, you would like to start all over
14 again, it sounds to me like. That's what I'm running into
15 throughout this trial. After the fact, then I get requests.

16 For example, when we recessed, while the clerk
17 worked on the jury list, you went up to the clerk and told her
18 you wished you had done something with reference to two of the
19 prospective jurors, who were city employees, and I think she
20 told you, from what she told me, that she said that's
21 something you need to take up with the judge when he comes
22 back in the courtroom.

23 Those are the sorts of things we're running into.
24 After the fact, then I hear that there's some objection to
25 what's happening.

1 MR. WASHINGTON: Your Honor, I've tried. Your
2 Honor, we started yesterday at 2:30, yesterday, and I would --
3 out of the respect for the Court and with the Court's
4 instructions to us, I have tried to finish this complete trial
5 in four to five hours, and I have done everything I can, Your
6 Honor, not to --

7 THE COURT: Okay. They are willing to strike the
8 sentence that you first indicated you had an objection to, and
9 that was the sentence that we're here to talk about.

10 MR. WASHINGTON: No, that was between -- that was
11 not any agreement that I reached with Mr. -- I did not have
12 that agreement with Mr. East.

13 THE COURT: I think you're complaining of that
14 sentence --

15 MR. WASHINGTON: No, Your Honor --

16 THE COURT: -- and they are willing to strike it.

17 MR. WASHINGTON: I'm saying that there are a number
18 of issues that we plan to cross-examine Dr. Greenberg on
19 that's not going to take longer than 15 minutes.

20 What Mr. East -- Your Honor, Mr. East is accusing us
21 of going home and sleeping last night. Mr. East -- there is a
22 reason why Mr. East doesn't want to call Dr. Greenberg back on
23 the stand, because he got this autopsy report in.

24 THE COURT: Mr. Washington, y'all go home at night
25 and think about things that you wish you had done during the

1 day. That's not the way we try these lawsuits.

2 If there's something in this report that you want
3 stricken, we'll talk about it. Otherwise, let's move on and
4 get -- see if the jury is in the courtroom -- I mean, in the
5 jury room, and get them in here.

6 *MR. WASHINGTON:* And, Your Honor, as the Court has
7 stated with Dr. Greenberg, she's here. She is going to be
8 here, so I would just like the opportunity to ask her those
9 questions as well, that the Court agreed that we could.

10 *THE COURT:* Okay. I don't see any problem with him
11 asking her some questions.

12 Do you?

13 *MR. EAST:* Well, again, it depends on which
14 questions. If he's asking her about the supplemental report,
15 that's fine, but if he's going to talk to her about this
16 sentence that we're striking or that subject matter, then
17 we're just doing what the Court just talked about. We're
18 reopening -- he's getting a -- there are witnesses I wish I
19 had asked different questions to that I would like to recall.

20 *THE COURT:* Well, he is still putting on his
21 evidence.

22 *MR. EAST:* But he's passed Dr. Greenberg, Your
23 Honor, and he wants to go back and recall her for no other
24 reason than he wishes to ask her more questions.

25 *THE COURT:* Well, that's -- I think he might have

1 the right to do that --

2 MR. EAST: Okay.

3 THE COURT: -- since he's still putting his case on.

4 MR. EAST: Is he going to be prohibited under the
5 in-limine order which says we cannot talk about things that
6 happened after Jermaine Darden was handcuffed?

7 MR. WASHINGTON: Your Honor, I'm not going to get --
8 just to ease Mr. East's concern, I'm not going to get into any
9 issue, the things we're talking about -- anything that the
10 Court has limited.

11 THE COURT: Okay. I'm going to let you
12 cross-examine her about that sentence that you said you wanted
13 stricken or that you disapproved of on page 3.

14 MR. EAST: Your Honor, I --

15 THE COURT: The sentence that starts with:
16 "Following this, he was placed in a seated position." And you
17 can question her about the subpart F on the first page.

18 MR. EAST: Your Honor, that's what he just said he
19 wasn't going to talk to her about.

20 MR. WASHINGTON: Your Honor, the Court is
21 correct --

22 THE COURT: I'm going to let him question her about
23 those two subjects.

24 MR. WASHINGTON: And we have -- and within that
25 question, Your Honor, as -- I'm representing to the Court --

1 THE COURT: Okay. I think we've talked about this
2 enough. We've got to move on.

3 MR. WASHINGTON: Sure. Sure. And, Your Honor, one
4 other issue about the Motion in Limine, just very briefly, and
5 I apologize to the Court.

6 Mr. East, Your Honor -- the Court, in the Motion in
7 Limine --

8 THE COURT: Is this something else you're talking
9 about now?

10 MR. WASHINGTON: Yes. This is a different subject
11 that I want to make sure doesn't happen with these witnesses,
12 but the Court instructed us on motions in limines that we are
13 not to bring up issues with the witness on undisclosed records
14 of the City of Fort Worth.

15 THE COURT: That, what?

16 MR. WASHINGTON: Undisclosed records dealing with
17 witnesses, et cetera.

18 On yesterday, Mr. East questioned a number of these
19 witnesses on issues involving undisclosed City of Fort Worth
20 records, which is a subject to one of our Motion in Limine.
21 He went on and on with the questions.

22 We have never received these documents that he
23 questioned -- for example, on Orlando Cook -- and we're just
24 asking, Your Honor, that Mr. East does not continue to
25 question witnesses on undisclosed City of Fort Worth records

1 that the Court has ruled on in the Motion in Limine.

2 MR. EAST: I totally disagree with that, Your Honor.
3 I don't know what Motion in Limine he's referring to in
4 particular, but I certainly haven't talked about documents
5 that were never disclosed. He got the entire police
6 investigative file. There is nothing we discussed that wasn't
7 in that file.

8 MR. WASHINGTON: On Mr. -- you asked -- he asked
9 questions of Orlando --

10 THE COURT: Which Motion in Limine are you referring
11 to?

12 MR. WASHINGTON: Sure, Your Honor. On Motion in
13 Limine number 13.

14 THE COURT: Let me find that motion, if I can.

15 MR. WASHINGTON: And it would be document 137, Your
16 Honor.

17 THE COURT: Unfortunately, I don't have my documents
18 numbered.

19 Does somebody have that Motion in Limine where I can
20 look at it?

21 MR. WASHINGTON: I have it. I wrote on mine, Your
22 Honor, but I can --

23 THE COURT: Well, do you have one that you haven't
24 written on?

25 MR. WASHINGTON: No, Your Honor.

1 *THE COURT:* I just won't pay any attention to
2 writing, if you have one you've written on.

3 *MR. WASHINGTON:* The writing is so bad, you might
4 not even be able to understand it, Your Honor.

5 *THE COURT:* Here's the -- it shows I've granted
6 this, any reference including any questioning regarding the
7 same relating to previously undisclosed City of Fort Worth
8 records for any purpose.

9 And what is it you say they've referred to so far?

10 *MR. WASHINGTON:* He's talked to -- he's referred --
11 he's talked to Clifford (sic) Crippen about criminal history
12 of a number of individuals who were in that house, et cetera.
13 These were all undisclosed City of Fort Worth records. He
14 asked him about, were you aware that this person was charged
15 with this particular crime. He asked --

16 *THE COURT:* Well, now what causes you to think those
17 are City records?

18 *MR. WASHINGTON:* Because it all happened in the City
19 of Fort Worth, so these are City of Fort Worth records.

20 *THE COURT:* Well, I think you can get that kind of
21 information from other sources. I don't know that that's a
22 reference to City of Fort Worth records.

23 *MR. EAST:* I didn't reference any documents. I
24 asked him questions about facts about -- if there was a
25 criminal history question or an arrest question, those were

1 the facts. I didn't reference any Fort Worth documents at
2 all.

3 *MR. WASHINGTON:* No, it says, getting. It doesn't
4 say that you have to reference the document. It just
5 specifically says any information that you get, you receive
6 from undisclosed City of Fort Worth records.

7 And when Orlando Cook was on the stand, one of the
8 questions he asked, he said, you know, you were charged or you
9 were sentenced --

10 *THE COURT:* Did you object to those questions when
11 they were asked?

12 *MR. WASHINGTON:* There was a -- Your Honor, I'm not
13 going to represent to the Court that there was a direct
14 objection at that point, but it is -- I'm bringing to the
15 Court's attention that this is the second time that Mr. East
16 has intentionally violated the Court's --

17 *THE COURT:* I didn't take what he asked to be a
18 reference to undisclosed City of Fort Worth records.

19 *MR. EAST:* And if we're talking about Orlando Cook's
20 conviction for the heroin possession, that's an exhibit in
21 this case. Mr. Washington has that.

22 *THE COURT:* I don't understand what your complaint
23 is, Mr. Watson (sic), at this time.

24 *MR. WASHINGTON:* The complaint is --

25 *THE COURT:* Washington, I'm sorry.

1 MR. WASHINGTON: That's okay, Your Honor.

2 Basically, Mr. East continues to reference a number
3 of convictions he -- for example, he talked about a custody
4 battle that we were not aware of. Those are --

5 THE COURT: That's not a Fort Worth record.

6 MR. WASHINGTON: That's a --

7 THE COURT: It's a Tarrant County record, I assume.
8 A custody battle would be a record of the courts of Tarrant
9 County, not Fort Worth.

10 MR. WASHINGTON: But, again -- and, Your Honor,
11 it's --

12 THE COURT: Okay. Is there anything else we need to
13 talk about before we get the jury in?

14 MR. EAST: I have one thing, Your Honor.

15 THE COURT: Pardon?

16 MR. EAST: I have one thing, Your Honor.

17 MR. WASHINGTON: May I get the motion, Your Honor?

18 THE COURT: Pardon?

19 MR. WASHINGTON: Can I get the copy of the Motion in
20 Limine?

21 THE COURT: You want your Motion in Limine back?

22 MR. WASHINGTON: Yes, Your Honor.

23 THE COURT: Thank you.

24 MR. WASHINGTON: Thank you, Your Honor.

25 THE COURT: And here's your autopsy report back.

1 MR. WASHINGTON: Okay. I'm sorry. Thank you.

2 COURT SECURITY OFFICER: Judge, all the jury is
3 here.

4 MR. WASHINGTON: We're ready to proceed, Your Honor.

5 THE COURT: What is it you want to talk about?

6 MR. EAST: Along the lines of what Mr. Washington
7 was talking about, our prior objections to exhibits that have
8 been ruled on.

9 At one point Mr. Washington offered a number of
10 exhibits that he represented we had reached agreement on, and
11 then at some point he has an exhibit in here, Number 49, which
12 we have never reached an agreement on, and I have the e-mail
13 about our agreement, nor was it an exhibit that was brought to
14 anybody's attention as having been -- it was previously -- our
15 objection was previously sustained to this exhibit. My --

16 THE COURT: Exhibit 49?

17 MR. EAST: Yes, Your Honor.

18 THE COURT: Let me find what that is.

19 Still photo 2 - Darden both hands up, is the way
20 it's described in the joint exhibit list.

21 And what are you saying about that exhibit?

22 MR. EAST: Based on our prior objections that it was
23 misleading and prejudicial, the Court sustained those
24 objections because it's an instant in time when he's flexing.
25 He's not raising his hands in surrender because it's a micro

1 instant in time where --

2 THE COURT: Well, the jury saw what was on the
3 video, didn't they?

4 MR. EAST: Yeah, and what's on the video is -- you
5 see on the video that it goes by in the split of a second,
6 but --

7 THE COURT: Okay. Well, I don't understand what the
8 complaint is now. If I sustained an objection to it, it
9 shouldn't have been offered without getting the Court's
10 permission, but it is in evidence and I don't know that you've
11 been harmed by it --

12 MR. EAST: Okay.

13 THE COURT: -- if the video doesn't show that.

14 MR. EAST: Thank you, Your Honor, for the
15 clarification.

16 Also, on the exhibit list, this is not going to go
17 to the jury, is it, with these descriptions?

18 THE COURT: The what?

19 MR. EAST: The exhibit list itself will not go to
20 the jury?

21 THE COURT: No, that's not my plan that the exhibit
22 list go to the jury.

23 MR. EAST: And the final matter is, since yesterday,
24 we have added the actual computer disks, numbers 1 and 138.
25 We have been playing it off the computer, but we hadn't added

1 those hard exhibits, and they are in the admitted exhibits
2 now.

3 *THE COURT:* You've done what?

4 *MR. EAST:* The actual computer disks, we hadn't
5 provided them yesterday. I'm letting the Court know they are
6 now part of the exhibit book.

7 *THE COURT:* That's Exhibits 1 and what?

8 *MR. EAST:* 138.

9 *THE COURT:* Exhibits 1 and 138?

10 *MR. EAST:* Yes, Your Honor. Those are the videos
11 that we were showing on the computer. These are just the
12 actual disks.

13 *THE COURT:* Okay. Is there any reason why we can't
14 bring the jury in now and proceed on with the trial?

15 *MR. EAST:* No, Your Honor.

16 *THE COURT:* Okay. Are they here?

17 *COURT SECURITY OFFICER:* Yes, sir.

18 *THE COURT:* Okay. Bring them in at this time.

19 *(Pause in Proceedings)*

20 *COURT SECURITY OFFICER:* All rise.

21 *(Jury present)*

22 *COURT SECURITY OFFICER:* Please be seated.

23 *THE COURT:* Good morning.

24 *ALL PRESENT:* Morning.

25 *THE COURT:* Okay. You may call your next witness.

1 MR. WASHINGTON: Thank you, Your Honor. The
2 plaintiffs call Dashawn Darden.

3 **DASHAWN DARDEN,**
4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. WASHINGTON:**

7 Q. Good morning.

8 A. Good morning.

9 Q. Can you please introduce yourself?

10 A. My name is Dashawn Darden.

11 Q. And Dashawn, how old are you?

12 A. 23 years old.

13 Q. And where do you currently live?

14 A. Fort Worth, Texas.

15 Q. You've heard testimony about your relationship with
16 your dad, so we're going to be very brief with these
17 questions. Just briefly, just describe the loss that you have
18 experienced since your father is no longer here.

19 A. Well, very traumatized, and, you know, just -- just
20 don't know how to just let -- some bad anxiety. It just
21 messed with me a lot.

22 Q. And how did you learn that your father was deceased?

23 A. My grandmother.

24 Q. And how did you handle learning that news?

25 A. Not well.

1 Q. What do you mean? Can you explain?

2 A. Like as in, just, I was having nightmares and
3 just --

4 Q. I'm sorry. If you don't mind, if you could try to
5 speak closer to the mike.

6 A. I said, well, as a -- like, I'm always having
7 nightmares, thinking about him daily, just -- like, I got very
8 bad anxiety. Like, just -- I'm terrified of police officers.
9 Just a lot.

10 Q. How old were you at the time of your father's death?

11 A. I was 15.

12 THE COURT: Were you at the house when the police
13 officers were there?

14 THE WITNESS: No, sir. I was in school.

15 THE COURT: Okay.

16 Q (BY MR. WASHINGTON) And how often -- and I just want to
17 get it from you -- how often did you spend time with your
18 father?

19 A. Always. He took me to school, picked me up. I was
20 over there every weekend. He was -- he was actually my
21 football coach, and we just had a very close relationship to
22 where, like, that was the only person I could talk to.

23 Q. Did your daddy give you advice?

24 A. He gave me a lot of advice.

25 Q. Was that something that you got from your father a

1 lot?

2 A. Yes, sir.

3 Q. Did your dad financially take care of you?

4 A. Yes, sir.

5 Q. What are some of the things your father used to do
6 for you?

7 A. He kept me in sports and then, like, he just stayed,
8 stayed on me about being a good man in life, and just, you
9 know, like just really tried to show me something he didn't
10 have in life by like having a dad.

11 Q. And since your father's death, was yesterday the
12 first time you've ever been able to review the video?

13 A. Well, I have, but I actually just didn't just pay
14 attention to it to where I just -- you know, I tried to
15 just -- I, like, listened to it and stuff, but, like, I never
16 just, like, actually just watched the whole thing.

17 Q. Do you ever think you'll be the same?

18 A. No.

19 MR. WASHINGTON: I pass the witness, Your Honor.

20 THE COURT: Do you have any questions of this
21 witness?

22 MR. EAST: No questions.

23 THE COURT: Do you have any questions of this
24 witness?

25 MR. THOMAS: No questions, Your Honor.

1 THE COURT: Can he be excused?

2 MR. WASHINGTON: Yes, he may, Your Honor.

3 THE COURT: You're excused as a witness.

4 Call your next witness.

5 MR. WASHINGTON: Your Honor, the plaintiffs call
6 Daylin Darden.

7 **DAYLIN DARDEN,**
8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. WASHINGTON:**

11 Q. Good morning.

12 A. Good morning.

13 Q. And I'm just going to ask you, Daylin, if you can get
14 as close as you can to the mike so we can clearly hear you.

15 A. Yes, sir.

16 Q. Can you please introduce yourself?

17 A. My name is Daylin Darden.

18 Q. And how are you feeling today, Daylin?

19 A. I'm just angry really, just sad.

20 Q. Daylin, how old are you?

21 A. 20.

22 Q. And who do you currently live with?

23 A. My grandmother.

24 Q. And we're going to talk just briefly, Daylin, about
25 your relationship with your dad. Can you just please describe

1 that to me?

2 A. It was -- it was like -- what you mean? Can you say
3 that again? I'm going through it over here. I'm really
4 messed up. Could you say that one more time?

5 Q. Can you just please briefly describe to me your
6 relationship with your dad, that you had with your father?

7 A. It was the best relationship I done had with anybody.
8 Really, I don't -- I really don't be talking as much, so -- he
9 was the only person I just really just talked to about
10 anything, you know what I'm saying, you know. It was a good
11 relationship. The best relationship that you can have with
12 your father.

13 Q. How often did you spend time with your father?

14 A. Every day.

15 Q. What are some of the things you used to do with your
16 father?

17 A. Just basketball, everything. Like anything I was
18 into, he was into it. He going to support me through
19 everything. So, like sports. I was into dogs and things like
20 that. He was going to, like, teach me about all that, and
21 make sure I'm into it, and keep me focused on doing things
22 that I want to do.

23 Q. Did your father ever teach or talk to you and your
24 brother about his trade being a mechanic?

25 A. I would see my dad working on cars all day, and teach

1 us how to work on cars. My brother knows how to work on cars
2 to this day.

3 Q. How old were you, Daylin, at the time of your
4 father's death?

5 A. 12, I think 12.

6 Q. And how did you learn of your father's death?

7 A. My grandmother told me.

8 Q. And how did you react to the news that your father
9 was dead?

10 A. Like, at the moment how did I react?

11 Q. Yes.

12 A. I don't know. I just crashed. I just -- what normal
13 people do. I just couldn't stop crying. I was messed up. I
14 felt like they took the best person from the world from me,
15 the only person I just -- the only one that I feel like that
16 was just, you know, there for me through anything.

17 Q. How have you been able to handle the death of your
18 father?

19 A. I don't think I have. I don't. I just been going
20 through it lately since then. All the -- I haven't been doing
21 anything. I just lost interest in everything really, just
22 everything that I used to do. I don't really care about it no
23 more.

24 Q. Did your father used to financially take care of you
25 and your brother?

1 A. Yes, sir.

2 Q. What are some of the things your father used to do
3 for you and your brother?

4 A. Financially?

5 Q. Yes.

6 A. Buy clothes on -- put clothes on our back, put a roof
7 over our head, take us back and forth to school, gas money, a
8 lot of stuff, doing things that a father would do every day.

9 MR. WASHINGTON: Your Honor, I pass the witness.

10 I pass the witness, Your Honor.

11 THE COURT: Do you have any questions of this
12 witness?

13 MR. EAST: No questions, Your Honor.

14 MR. THOMAS: No questions, Your Honor.

15 THE COURT: Can he be excused as a witness?

16 MR. WASHINGTON: Yes, he may.

17 THE COURT: You're excused as a witness. You can
18 step down.

19 MR. WASHINGTON: Your Honor, I would check to see if
20 Dr. Greenberg is still in the hall.

21 THE COURT: You want to recall Dr. Greenberg?

22 MR. WASHINGTON: Yes, Your Honor.

23 THE COURT: You're welcome to.

24 (Pause in Proceedings)

25 MR. WASHINGTON: Your Honor, I'm looking for the

1 extra copy of the autopsy report. I think you may have handed
2 it to --

3 *THE COURT:* You may proceed.

4 *MR. EAST:* That's the original. Mine has notes on
5 it, my notes.

6 *MR. WASHINGTON:* Your Honor, we gave the Court an
7 extra copy of the autopsy report. If I could have just a
8 couple of seconds --

9 *THE COURT:* I'm sorry, what did you say?

10 *MR. WASHINGTON:* I'm handing Dr. Greenberg the
11 original exhibit, the autopsy report.

12 *THE COURT:* That's fine.

13 *MR. WASHINGTON:* But we had an extra copy and I'm
14 just trying to --

15 *THE COURT:* Well, you can hand it to her, and if you
16 have a copy, you can work from your copy.

17 *MR. WASHINGTON:* Yes. Just one second, Your Honor.
18 We have an extra copy.

19 *MR. THOMAS:* What's the number? I've already
20 given -- the Court has my copy.

21 *THE COURT:* You'll recall I handed you back your
22 copy while ago.

23 *MR. WASHINGTON:* I have it.

24 May I proceed, Your Honor?
25

1 **TASHA GREENBERG,**
2 having been previously duly sworn, further testified as
3 follows:

4 **DIRECT EXAMINATION**

5 **BY MR. WASHINGTON:**

6 Q. Good morning, Dr. Greenberg.

7 A. Good morning.

8 Q. I just have a few follow-up questions for you.

9 *THE COURT:* Let me clarify something while you're
10 doing that.

11 Yesterday there was a question about a supplemental
12 autopsy report or something like that, and one of the lawyers
13 made an indication that there wasn't such a thing.

14 Is there such a thing?

15 *THE WITNESS:* Not that I'm aware of.

16 *THE COURT:* Okay. Go ahead.

17 *MR. WASHINGTON:* Okay. Thank you, Your Honor.

18 Q *(BY MR. WASHINGTON)* So -- and for clarity, the
19 supplemental autopsy report that we discussed on yesterday,
20 there was --

21 *THE COURT:* She just said there wasn't any such
22 thing. You can move on. You don't need to go over what I've
23 already done.

24 Q *(BY MR. WASHINGTON)* Can we go to paragraph 15 of Exhibit
25 145 that's in front of you?

1 THE COURT: I believe there were two other pages
2 that you indicated you wanted to ask her about, 1 and --

3 MR. WASHINGTON: 1 on page 1, page 15, and the
4 follow-up questions I had, Your Honor.

5 THE COURT: Those are the two different --

6 MR. WASHINGTON: Pages, yes.

7 THE COURT: You can ask her about those subjects.

8 MR. WASHINGTON: Okay.

9 THE COURT: And there were two particular sentences
10 that you had a concern with that you wanted to ask her about.

11 Q (BY MR. WASHINGTON) On findings, if you go to page --
12 the first page under the findings, you indicated that the
13 subject was engaged in a physical struggle with police after
14 failing to comply with instructions during the search warrant.

15 A. Yes.

16 Q. And if you go to page 15 of that autopsy report in
17 the last paragraph, are you there?

18 A. Yes.

19 Q. Now, would this be the investigator's report that you
20 indicated you relied on?

21 A. Yes.

22 Q. Now, the second sentence of that last paragraph --
23 and let me know when you're there.

24 A. Yes.

25 Q. And if you could read that second sentence, not out

1 loud.

2 A. Okay.

3 Q. Now, in your investigator's report, that indicated
4 that Mr. Darden did comply with the officers, he initially
5 complied with the officer's command.

6 THE COURT: What investigative report are you
7 referring to?

8 MR. WASHINGTON: Sir?

9 THE COURT: What investigative report are you
10 referring to?

11 MR. WASHINGTON: That's attached to the autopsy
12 report that Dr. Greenberg said she relied upon.

13 THE COURT: Well, I haven't seen that.

14 MR. WASHINGTON: You and I went through this, Your
15 Honor. This is page 15.

16 THE COURT: Oh, is that what you're talking about?

17 MR. WASHINGTON: Yes, sir.

18 THE COURT: Go ahead.

19 Q (BY MR. WASHINGTON) So your investigator indicated that
20 Mr. Darden complied?

21 A. That's correct.

22 Q. But yet in your investigative findings, you indicated
23 that he did not comply?

24 A. That is correct also.

25 Q. So you would agree with me that that is a

1 contradiction?

2 A. It's a contradiction, but as we mentioned before, I
3 don't rely only on the investigative report. We also had
4 video to review that allows me to interpret and write those
5 findings as I see fit.

6 Q. I understand you looked at the video, but your
7 investigator is the person that went out and also reviewed the
8 video and came up with --

9 A. No, sir. The investigator at the time this report is
10 written, this is written the day that they get the
11 information, and this is what I have prior to the autopsy.
12 They did not review the videos prior to this being written is
13 my understanding. I received the videos later.

14 Q. Can you look and review page 15. And on the first
15 paragraph, it indicated that he became unresponsive after
16 being tasered twice by the Fort Worth Police Department.

17 A. Yes, that's correct.

18 Q. So this would also conflict with your findings that
19 you indicated that he just died of a natural cause, but this
20 stated in the investigator's report that he became
21 unresponsive after the second deployment?

22 A. That is correct. That is what that says. That's
23 also what the medical records indicate. But if you look at
24 the video --

25 Q. And I'm just asking you just that question. So, you

1 had detailed information from investigators who indicated when
2 Jermaine Darden became unresponsive?

3 A. Their -- yes, their information comes from people
4 that they speak to, including the people at the hospital who
5 would have reported this death, and they report what they are
6 told, and ultimately that information may or may not be
7 substantiated.

8 Q. But you agree that there are conflicts?

9 A. I agree that these are different statements than what
10 I viewed.

11 Q. Now, if you go to page 3, final question for you.
12 Now, you indicated that following the incident that Mr. Darden
13 was placed in a seated position and at the time he was awake
14 and moving around.

15 Do you see that?

16 A. I say that he was awake.

17 Q. Now, you had the opportunity, Dr. Greenberg, to
18 review that video, didn't you?

19 A. Yes.

20 Q. And in that video, isn't it clear that Mr. Darden was
21 not awake and moving around when he was placed in that seated
22 position?

23 A. Well, I didn't say he was moving around, and it was
24 our interpretation at the initial time that this was reviewed
25 that we saw that he was breathing. That was our

1 interpretation of that video.

2 Q. So I want you to explain how, looking at this video,
3 you can make an interpretation that Jermaine Darden was alive
4 when he was in that seated position.

5 A. I just said that we thought that we saw that he was
6 breathing when we viewed that video.

7 Q. And if I look at page 3 under this, where does it
8 indicate that you looked at the video and it appears that he
9 was breathing?

10 A. All I said there was that he was awake, and what my
11 implication was, was that we saw that he was alive or we
12 thought that he was alive, and perhaps "awake" was the wrong
13 word to use.

14 Q. So you don't know if he was alive?

15 A. No, I don't know. As I said, that was our
16 interpretation at the time we viewed the video.

17 Q. And did you talk to any officers or your investigator
18 to get his summary to determine if Mr. Darden was alive?

19 A. No, we did not speak to the officers, and our
20 investigator would not know. Our investigator was not present
21 at the time of the incident.

22 Q. So that information -- would you agree that
23 information, in order to have an accurate autopsy report that
24 anyone could rely on, would have to have as much detail --

25 *THE COURT:* I think you're making an argument, and

1 let's don't do that. Let's move on.

2 MR. WASHINGTON: I apologize.

3 THE COURT: If you have another question, ask the
4 question.

5 MR. WASHINGTON: Sure.

6 Q (BY MR. WASHINGTON) And in your findings, you talk about
7 the taser deployment?

8 A. Yes.

9 Q. On investigative findings B?

10 A. Yes.

11 Q. And you only indicate that there were two?

12 A. Yes.

13 Q. But you came to discover that there were actually
14 four taser darts in Mr. Darden's spine?

15 A. This says, taser deployed times two, which means two
16 deployments of the taser. Each deployment allows two darts to
17 come out, but that is only one deployment and one use of the
18 taser at that time.

19 Q. But how many cassettes were submitted to you?

20 A. I had reviewed -- I don't have the exact number of
21 cassettes in front of me. The number is not accurately
22 indicated on page 8.

23 Q. So we wouldn't have -- looking at this autopsy
24 report, we wouldn't be able to make that determination?

25 A. About the number of cassettes?

1 Q. Correct.

2 A. No. Only through looking at the histology
3 description would tell you what was looked at, but, as I
4 mentioned, it may be that initially two cassettes were
5 submitted and then subsequently more were submitted to allow
6 review of more of the organs.

7 Q. So subsequent to this, when they are submitted to you
8 all, would you create an additional report?

9 A. Well, the review of the histology findings is
10 included in the original report. The number of cassettes just
11 did not get changed.

12 Q. So if you got them later, would you create an
13 additional report?

14 A. If I had gotten them after this initial report was
15 written, then usually an additional report would be created.

16 Q. Now, with the tasers, the taser darts were deployed
17 in Mr. Darden's spinal cord.

18 A. No. They were deployed -- the taser darts landed on
19 his back and they go into the skin. They do not penetrate to
20 the spinal cord.

21 Q. Did you examine the spinal cord?

22 THE COURT: I think that's beyond what you've
23 indicated you wanted to recall her for.

24 MR. WASHINGTON: Okay. Appreciate that, Your Honor.

25 THE COURT: Are you through?

1 MR. WASHINGTON: I'll pass the witness, Your Honor.

2 THE COURT: Do you have any further questions you
3 want to ask at this time?

4 MR. EAST: Yes.

5 **CROSS-EXAMINATION**

6 **BY MR. EAST:**

7 Q. The word "cassette" that was just used, what is that?

8 A. So a cassette is actually a small plastic box-like
9 structure that we put tissue samples in. That tissue is then
10 processed in a series of formalin and chemicals embedded in
11 paraffin, which is a wax. Then that tissue is thinly sliced,
12 put onto a slide and stained, so that we can then look at it
13 under the microscope.

14 Q. And tissue sample cassettes have nothing to do with
15 tasers, correct?

16 A. Correct.

17 Q. That was bookend by those taser questions, but
18 totally separate subject, correct?

19 A. Correct.

20 Q. All right. On page 15, when he referred to the
21 investigative report, at the top it says the taser X 2 was
22 deployed twice on Jermaine Darden after he became, quote,
23 physically noncompliant, correct?

24 A. Correct.

25 Q. And you say this is a report that was made by an

1 investigator from your office going out and talking to
2 somebody from the police department almost immediately or very
3 close after the time of the incident?

4 A. Well, the report is put together from information
5 that they receive potentially from multiple sources, and as
6 you go through it, under medical history, it indicates that
7 the brother said something, and that Detective Roloff said
8 something, and then someone from John Peter Smith Hospital
9 said something. So, this is a compilation of all the things
10 that they gathered from multiple different sources.

11 Q. Close to the time of the incident?

12 A. Correct.

13 Q. And so this was before a thorough investigation was
14 conducted?

15 A. Correct.

16 Q. And this was before your investigator even saw the
17 videos?

18 A. Correct.

19 Q. On page 1 of your report -- I'm sorry, back on page
20 15, he says the taser was deployed twice. On page 1 of your
21 report, you say the taser was deployed twice, and that is, you
22 pull the trigger, it makes a pop, two darts go out, and that's
23 a deployment?

24 A. Yes.

25 Q. And on page 3 that Mr. Darden (sic) discussed, it

1 says, there was no direct contribution of taser deployment in
2 his death. Do you see that sentence on page 3 following the
3 sentence that you and he had spoke about? Mr. Washington, if
4 I misspoke.

5 A. Yes.

6 Q. All right. There was no direct contribution of taser
7 deployment in his death, meaning that it was among the force
8 that was used to try to subdue Mr. Darden, but there was
9 nothing about the taser itself that had anything to do with
10 his death, correct?

11 A. Correct.

12 Q. Okay. And the sentence that you spoke about that
13 says he was nonresponsive after the second taser deployment,
14 well, technically that's true. Eventually, after the second
15 taser deployment, he became nonresponsive, but on the video
16 you can see him continuing to struggle through the time he was
17 handcuffed, correct?

18 A. Correct.

19 MR. EAST: Pass the witness.

20 MR. WASHINGTON: Your Honor, I just --

21 THE COURT: Do you have any questions of this
22 witness?

23 MR. THOMAS: No, Your Honor, I have no further
24 questions.

25 THE COURT: Did you have another question you wanted

1 to ask her?

2 MR. WASHINGTON: Yes, just a brief follow-up to what
3 Mr. East asked.

4 **REDIRECT EXAMINATION**

5 **BY MR. WASHINGTON:**

6 Q. Dr. Greenberg, if you can go to page 15, I just want
7 to ask you a couple of questions from the report that you
8 discussed with Mr. East.

9 If you go to the second page of that report, page 16,
10 is that investigative report signed?

11 A. No, this one is not signed.

12 Q. Okay. So then, if you go to page 15, the last
13 paragraph, if you look at the last sentence on 15 -- let me
14 know when you're there.

15 A. I'm there.

16 Q. It indicates, the decedent initially began to comply
17 with the officers' instructions, but stood up again and
18 continued to walk into an adjacent room.

19 Do you see that?

20 A. I do.

21 Q. In your review of the video, did you see Mr. Darden
22 stand up and walk into an adjacent room?

23 A. I did not see him walk into an adjacent room, no.

24 Q. So, again, this would be in total contradiction to
25 what you saw in the video?

1 A. Correct. This is not based upon the video.

2 Q. So, who would have given the medical examiner this
3 information that Mr. Darden stood up and walked --

4 THE COURT: I think you've covered that. Let's
5 don't keep going over the same thing.

6 MR. WASHINGTON: Yes, sir.

7 THE COURT: Let's don't argue. Let's move on.

8 MR. WASHINGTON: Okay.

9 Q (BY MR. WASHINGTON) And Mr. East indicated that the
10 tasers didn't cause his death. You understand, Dr. Greenberg,
11 that we're not saying that the taser caused Mr. Darden's
12 death?

13 THE COURT: Let's don't make an argument, and don't
14 make a statement for the jury. That's not time to do that.

15 Q (BY MR. WASHINGTON) The combination of what you
16 reviewed --

17 THE COURT: Let's don't make a statement. Ask her a
18 question, if you have a question to ask her.

19 Q (BY MR. WASHINGTON) Okay. Based on the information that
20 you reviewed and the video, those was force that could have
21 led to Mr. Darden's death?

22 A. I'm sorry, I didn't understand that.

23 THE COURT: Do you have a question you want to ask
24 her?

25 MR. WASHINGTON: That was the question, Your Honor.

1 THE COURT: Well, state it in a question form so
2 she'll know what you're doing.

3 Q (BY MR. WASHINGTON) Okay. The question is: Based on
4 what you reviewed in the video, and what you were able to get
5 from your investigator's report, was -- the force that was
6 used by those officers could have contributed to the death of
7 Mr. Darden?

8 A. All of the things that were part of the physical
9 struggle that is referred to certainly could have contributed.

10 MR. WASHINGTON: I pass the witness, Your Honor.

11 THE COURT: Okay. Any further questions?

12 MR. EAST: Just one or two.

13 **RECROSS-EXAMINATION**

14 **BY MR. EAST:**

15 Q. Nothing you just testified to or discussed with
16 Mr. Washington changes anything you testified to yesterday,
17 correct?

18 A. No.

19 Q. And the struggle may have triggered his underlying
20 severe disease, but there's no indication that the struggle
21 itself would have caused an ordinary person to die, correct?

22 A. Not in my opinion, no.

23 MR. EAST: Thank you.

24 THE COURT: Okay. Can she be excused?

25 MR. WASHINGTON: Your Honor, yes, she may be

1 excused.

2 *THE COURT:* You're excused. Thank you. You can
3 step back down.

4 *THE WITNESS:* Thank you, Your Honor.

5 *THE COURT:* Call your next witness, if you have one.

6 *MR. WASHINGTON:* Your Honor, at this time the
7 plaintiffs rest.

8 *THE COURT:* Okay. Call your first witness,
9 Mr. East.

10 *MR. EAST:* May we approach, Your Honor?

11 *(Bench conference on the record, out of the hearing*
12 *of the jury, as follows:)*

13 *MR. EAST:* I want to make a Rule 50 motion at this
14 time. I don't know if it's better to do it with the jury out
15 of the courtroom.

16 *THE COURT:* You can do it right now.

17 *MR. KITA:* May I be excused to grab my notes real
18 quick?

19 *THE COURT:* Do what? You can go get your notes.
20 Okay. Go ahead.

21 *MR. EAST:* With the Court's permission, this will be
22 on behalf of both defendants, unless Mr. Thomas wants to
23 supplement.

24 *THE COURT:* That's fine.

25 *MR. EAST:* So this is the defendants Rule 50(a)

1 Motion for Judgment as a matter of law.

2 The claim before this Court is for excessive force,
3 Your Honor. The plaintiff has the burden to prove both that
4 the use of force was excessive, legally, and that the -- had
5 that they met their burden to overcome these officers'
6 qualified immunity.

7 Defendants in this case were shown to have used
8 force only in response to Mr. Darden's unquestionable physical
9 resistance to their efforts, and following the struggle, he
10 died from an underlying coronary disease, and the only
11 evidence is that the struggle -- that the force these officers
12 used would not have caused a person without that disease to be
13 killed, and there was no way possible under the evidence
14 presented that these officers could have known of his
15 underlying coronary disease.

16 No reasonable jury under these facts could reach a
17 verdict in favor of the plaintiff. The plaintiff did not meet
18 their burden under the excessive force standard to show injury
19 resulting directly and only -- from a use of force that was
20 clearly excessive and the excessiveness of which was clearly
21 unreasonable.

22 Under the facts of this case, the Fifth Circuit --
23 it was filed in this court yesterday -- agreed that the
24 knowledge of the extent and severity of an underlying
25 preexisting condition is a necessary burden for the plaintiffs

1 to meet. They have not met that in any way whatsoever.

2 In fact, they have proven the contrary through the
3 testimony of the witness they called, Tasha Greenberg. They
4 also have not managed to overcome the defendant's qualified
5 immunity by showing that they acted clearly unreasonably or
6 violated a clearly established right of Jermaine Darden's.

7 *THE REPORTER:* I need you to speak into that
8 microphone.

9 *MR. EAST:* The evidence, particularly the undisputed
10 video evidence, combined with the admissions of plaintiff's
11 own witnesses who talked about Mr. Darden resisting, although
12 for reasons they think have to do with his health condition --
13 one witness, Orlando Cook, I believe, testified that he
14 believed the officers thought Mr. Darden was resisting when
15 they were dealing with them.

16 For these reasons -- that's the only evidence the
17 plaintiff has presented -- the jury could not possibly rule
18 against these defendants. That's our motion.

19 *THE COURT:* Okay. That motion may have some merit,
20 but I'm going to let the jury make a run at it before I
21 decide.

22 *MR. EAST:* Thank you, Your Honor.

23 *MR. KITA:* Thank you, Your Honor.

24 *(In the hearing of the jury, as follows:)*

25 *MR. EAST:* Your Honor, I would like to get the video

1 set up and -- could we take a 5-minute recess while I do that
2 and --

3 *THE COURT:* Do what?

4 *MR. EAST:* Can we take a brief recess while I get
5 the video set up?

6 *THE COURT:* Do you want to set up the screen and put
7 up a computer? Well, we can do that.

8 *MR. EAST:* And talk to a witness.

9 *THE COURT:* It won't embarrass me if you do that in
10 my presence.

11 *MR. EAST:* And talk to a witness, Your Honor.

12 *THE COURT:* No. Go ahead and do that.

13 *MR. EAST:* That's fine, Your Honor.

14 *(Pause in Proceedings)*

15 *MR. EAST:* Defendants call Lieutenant Glen Verrett,
16 Your Honor.

17 *THE COURT:* Okay.

18 *THE REPORTER:* What was the last name?

19 *MR. EAST:* Glen Verrett, V-E-R-R-E-T-T, I believe.

20 *THE COURT:* Come up and be seated right here.

21 **GLEN VERRETT,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. EAST:**

25 Q. Good morning, sir.

1 A. Good morning.

2 Q. Will you please state your name?

3 A. Glen Verrett.

4 Q. I'm still gathering my stuff, I'm sorry. How are you
5 employed, sir?

6 A. Currently, I'm retired.

7 Q. And how were you employed before you were retired?

8 A. I was a lieutenant with the City of Fort Worth.

9 Q. And in the year 2013, what were you doing?

10 A. I was in charge of the Zero Tolerance Teams for the
11 City of Fort Worth Police Department.

12 THE COURT: You were in charge of what?

13 THE WITNESS: The Zero Tolerance Teams for the City
14 of Fort Worth Police Department.

15 THE COURT: Okay.

16 Q (BY MR. EAST) And are those a special tactical unit in
17 the City of Fort Worth?

18 A. Yes, sir, they are.

19 Q. And can you tell us what a Zero Tolerance or ZT --
20 and they are now called SRT or Special Response Team?

21 A. Yes, sir, that's correct.

22 Q. Can you tell us what the ZT teams were doing in 2013?

23 A. Our responsibility was to respond to anything that
24 was required by the City to deal with tactical situations,
25 whether it was serving search warrants or arrest warrants for

1 violent individuals, or at the same time dealing with civil
2 disturbances, those type of instances where it would require a
3 little bit more expertise in dealing with crowds than other
4 units.

5 Q. And your unit was a full-time, crime-fighting,
6 on-the-streets unit?

7 A. Yes, sir.

8 Q. And many of your members underwent SWAT training; is
9 that correct?

10 A. Yes, sir, that's correct.

11 MR. WASHINGTON: Your Honor, I'm going to object to
12 leading.

13 Q (BY MR. EAST) Describe the training your unit would
14 receive.

15 A. We received the equivalent training that our SWAT
16 team received, which would include anything from dynamic
17 entries to slow clear entries. It also would include the use
18 of our auxiliary machines and types of devices in order to
19 facilitate those type of entries.

20 Q. And were some of the members of the Central ZT Team
21 at that time former SWAT members themselves?

22 A. Yes, sir, one of them was, yes, sir.

23 Q. On -- so when a narcotics warrant is assigned to a ZT
24 Team to execute or serve, how does that process begin?

25 A. I would get a phone call from the narcotics officers,

1 who would tell me that they would have a warrant, and they
2 would give me a rough idea about the time. They would also
3 give me a rough idea of where the location would be. That
4 would allow me to choose which team was available, which team
5 was functionally on duty for that time period, and then how
6 many people I would actually need in order to operate and to
7 assist in that warrant service.

8 Q. And there were how many teams in the City?

9 A. Five teams.

10 Q. And you were in charge -- you were the lieutenant in
11 charge of all of them?

12 A. Yes, sir.

13 Q. So, by the time you got called to begin to put a team
14 together for a warrant service, the narcotics investigators
15 had already been conducting whatever investigation they were
16 doing to lead to that point, correct?

17 A. Yes, sir.

18 Q. And so on May 16th, 2013, did you get a call
19 regarding a house on Thannisch Avenue in Fort Worth?

20 A. I did, sir.

21 Q. And do you recall who called you?

22 A. No, sir, not really.

23 Q. Do you recall who the case agent was on that
24 narcotics investigation?

25 A. That would have been Officer Danford.

1 Q. And the case agent is the officer from narcotics who
2 worked up the case?

3 A. Yes, sir.

4 Q. And in this case, did you understand that there had
5 been CI, or confidential informant, drug buys made at that
6 property?

7 A. Yes, sir.

8 MR. WASHINGTON: Your Honor, I'm going to object
9 again as to Mr. East is leading this witness.

10 THE COURT: Is the purpose of that to explain why
11 they did certain things?

12 MR. EAST: Correct, Your Honor.

13 THE COURT: Well, I'll overrule the objection.

14 Q (BY MR. EAST) When you got the call from narcotics, did
15 they tell you that they wanted to serve a warrant on that
16 date?

17 MR. WASHINGTON: Your Honor, I'm going to object to
18 hearsay.

19 THE COURT: Let me -- I'll overrule the objection,
20 but let me explain to the jury, the answers to questions
21 asking about narcotics at that residence at this point in time
22 are simply to explain why they did certain things, so it's not
23 as proof that there were narcotics at the residence.

24 So, go ahead, with that explanation.

25 MR. EAST: Thank you, Your Honor.

1 Q (BY MR. EAST) When you were contacted by narcotics in
2 this case, it was because of an investigation at 3232
3 Thannisch Avenue involving reported drug buys, correct?

4 A. Yes, sir.

5 THE COURT: And I give y'all the same instructions
6 whenever there's a reference to narcotics or drugs at that
7 residence, at least up to this point it's simply to explain
8 why they did certain things, not as proof that there were
9 narcotics there.

10 Go ahead.

11 Q (BY MR. EAST) The Court's exactly correct on what I'm
12 about to say, my next question. The narcotics unit is the one
13 that makes those determinations and conducts that part of the
14 investigation, correct?

15 A. Yes, sir.

16 Q. And when they tell you they have a warrant, your job,
17 as a tactical unit, is to go serve that warrant, correct?

18 MR. WASHINGTON: Object, Your Honor. Again, I
19 understand he's -- well, I'm going to object to leading this
20 witness.

21 THE COURT: It is somewhat leading. In your
22 questioning, you almost led every witness, so I think maybe it
23 has become a custom in this case to lead witnesses.

24 MR. WASHINGTON: I will accept that, Your Honor.

25 THE COURT: Okay. Go ahead.

1 Q (BY MR. EAST) Do you remember the question?

2 THE COURT: And don't lead him. Why don't --

3 MR. EAST: I'll do my best, Your Honor. I'm trying
4 to save time.

5 THE COURT: Go ahead.

6 Q (BY MR. EAST) Do you remember it?

7 THE COURT: Just ask him questions instead of
8 telling him what you want him to say.

9 THE WITNESS: I forgot, sir.

10 Q (BY MR. EAST) So you were asked -- were you asked to
11 serve this particular warrant?

12 A. Yes, sir.

13 Q. And what was the next thing you did?

14 A. I contacted the unit that would be most applicable to
15 be able to handle that warrant, who was available at the time,
16 which would have been the Central ZT Unit.

17 Q. Was that a unit that you had confidence in?

18 A. Yes, sir.

19 Q. Okay. And who was assigned to be the team leader for
20 that unit that day?

21 A. For that day -- Rachel DeHoyos was the sergeant for
22 that day, but she was going to be out for the rest of the
23 afternoon due to a previous agreement that she had made with
24 something. So then instead, it was -- I can't remember the
25 sergeant's name. It was another sergeant from another team.

1 Q. Corporal Sutherland?

2 A. Yes, sir. He was acting sergeant at the time, so he
3 filled in as acting sergeant, yes, sir.

4 Q. So Corporal Sutherland became the acting sergeant for
5 this --

6 A. Yes, sir.

7 Q. -- operation, and was an officer named Michael
8 Johnson involved as well?

9 A. Yes, sir.

10 Q. And what was his role?

11 A. Michael Johnson would fill in as a team -- the team
12 leader in order to facilitate and to direct and to coordinate
13 what was going to occur during this process.

14 Q. And so while you're assembling this team and they are
15 calling each other in, what is going on, on this date, with
16 regard to Officer Danford? Do you know?

17 A. He would have still been on the scene still
18 conducting either the actual on-scene investigation or he may
19 have been actually getting the warrant signed itself.

20 Q. And are you aware that Officer Danford caused the
21 warrant in this case to be executed by a judge?

22 A. Yes, sir.

23 Q. Okay. And so when you received the warrant -- after
24 you got the team put together, did you receive the signed
25 warrant from Officer Danford?

1 A. Yes, sir.

2 Q. Okay. And that was a warrant that was presented to a
3 Tarrant County Judge?

4 A. Yes, sir.

5 Q. And it was signed as an execution of a narcotics
6 search warrant with approval for a no-knock entry; is that
7 correct?

8 A. Yes, sir, that's correct.

9 Q. And why do -- what are some of the things that a
10 no-knock entry is designed to try to prevent?

11 A. One of the things it tries to prevent is any
12 possibility for someone to prepare on the inside to create
13 violence or restrictions from those of us who are entering
14 from the outside. It gives us a moment of surprise so that we
15 can get in and quickly get the situation under control, and
16 for the safest possible opportunity for everybody involved to
17 come out of it in a way that's convenient for everybody.

18 Q. Are you hoping to prevent people from escaping?

19 A. Yes, sir.

20 Q. In this case, did anybody flee out of the house when
21 y'all made entry?

22 A. No, sir.

23 Q. Was there a gentleman named Lonnie Turner who left
24 the back of the house?

25 MR. WASHINGTON: Your Honor, I'm going to object to

1 this line of questioning as leading.

2 THE COURT: I think maybe we're getting into some
3 details that we don't need to get into, so in that sense, I
4 sustain the objection.

5 Q (BY MR. EAST) When you execute -- is executing a
6 no-knock felony narcotics warrant one of the most dangerous
7 things you can be asked to do as a police officer?

8 A. Yes, sir, it's one of them.

9 Q. When you go into that house, do you know what's on
10 the other side of that door before you get in?

11 A. No, sir.

12 Q. In this case, do you know how many people were inside
13 that house?

14 A. No, sir.

15 Q. Were there numerous?

16 A. Yes, sir.

17 Q. Have you seen the videos in this case?

18 A. Yes, sir.

19 Q. I only am allowed to play them one time, so I'm not
20 going to play them with you, but you've reviewed them both a
21 number of times?

22 A. Yes, sir.

23 Q. Okay. And when you arrived at the scene to serve
24 this warrant, where were you positioned?

25 A. The van carrying the officers, as they pulled up, I

1 was directly behind them in order to help block off the street
2 in order to keep people from flowing past that point where we
3 didn't want them to go in order to keep them safe, so I was
4 behind that process, which would have been on the east side of
5 Thannisch, the house on Thannisch.

6 Q. And when entry was made, you were standing outside?

7 A. Yes, sir.

8 Q. The team that was riding or that goes to one of these
9 warrant services, are there two primary assignments?

10 A. Well, each person has a specific assignment prior to
11 approaching the door. So everybody knows where they are
12 supposed to be, when they are -- what they are supposed to
13 actually occur, and there is also contingents in case
14 something happens where somebody is unable to perform because
15 of an injury or something like that.

16 Q. But can they be grouped into different teams?

17 A. There is -- there is perimeters, there is entry
18 teams, and then there's outside perimeters. So we have
19 perimeter officers who set up for perimeters for the actual
20 house itself, and then we have an outer perimeter which sets
21 up to keep people from incurring into that perimeter, and then
22 we have the actual entry team itself that actually breaches
23 the door and goes inside.

24 Q. And throughout the course of the history of a police
25 department and the tactical unit, officers are assigned to the

1 unit and then they go to other places, so there's a cohesive
2 number of people, but there are some that come and go as time
3 passes, correct?

4 A. Yes, sir.

5 Q. And who is assigned to an entry team, relative to
6 their experience on that team?

7 A. They have to go through the formal training in order
8 to do that process. There's a training process they have to
9 do. So the people that are assigned there are ones who have
10 received training and the ones that we know are capable of
11 accomplishing that task.

12 Q. And you're aware that Officer Snow was assigned to
13 the entry team?

14 A. Yes, sir.

15 Q. And are you familiar with his training up to that
16 point?

17 A. Yes, sir.

18 Q. And he was well-qualified and experienced to do that?

19 A. Yes, sir.

20 Q. And Officer Romero at the time was fairly new to the
21 team?

22 A. He was, sir.

23 Q. An experienced police officer, but new to that team?

24 A. Yes, sir.

25 Q. And for that reason, he was assigned to the perimeter

1 team?

2 A. That is correct, sir.

3 Q. Okay. When the breach of the door was made, do you
4 know who the first officer was that went through?

5 A. No, sir, not off the top of my head, no, sir.

6 Q. Okay. Do you know Officer Snow to have been among
7 the first?

8 A. Yes, sir.

9 Q. Okay. And did you see the breach being made?

10 A. No, sir.

11 Q. You've seen it on the videos since then?

12 A. Yes, sir.

13 Q. Are you aware that -- so if one of the reasons -- or
14 if the reasons to serve a no-knock warrant are to prevent
15 violence, to prevent escape, and to prevent destruction of
16 evidence -- all that's correct, right?

17 A. Yes.

18 MR. WASHINGTON: Your Honor, again, I object to
19 leading the witness.

20 MR. EAST: Well, that wasn't my question, I'm sorry.

21 THE COURT: Do try to avoid leading questions. I
22 know it's been done throughout the trial, but let's try to
23 quit doing that.

24 MR. EAST: Yes, Your Honor.

25 Q (BY MR. EAST) Given that, what do the police officers do

1 once they get into the house?

2 A. Once the door is actually breached, it becomes open,
3 and they immediately begin giving commands on what we want the
4 individuals inside the house to do. Most all the time, it's
5 for them to get down, to get down on the ground, and then we
6 start pushing into the house because we know we have several
7 rooms in which we usually have to get them to a position of
8 submission so that we can get everything quieted to a point
9 where we can do everything necessary to get everybody safe.

10 Q. And officers want to get to the back rooms of the
11 house as quickly as possible?

12 A. Yes, sir.

13 MR. WASHINGTON: Objection, leading.

14 Q (BY MR. EAST) And in this case, are you aware -- I
15 assume you're aware Officer Snow encountered Jermaine Darden
16 on the sofa, correct?

17 A. Yes, sir, that's correct.

18 Q. Why would he want to get Jermaine Darden off of that
19 sofa as quickly as possible?

20 A. The problem with any individual that's standing next
21 to anything is they have either weapons that they have the
22 opportunity to get to, or weapons of opportunity, things that
23 can cause anybody harm inside, whether it's intentional or
24 unintentional acts. Many times people do stuff, and in the
25 process try to get away, and then incidentally injure other

1 people that they don't necessarily mean to injure, like other
2 people who are present in the room or other people who may be
3 nearby.

4 So in order to get him down and get him on the
5 ground, it's the best place that we can deal with him to get
6 him quickly into custody so that we can get him to a position
7 where we can completely deal with him in a controlled manner.

8 Q. Does that keep him away from being able to grab a
9 weapon that's hidden in the cushion?

10 A. Absolutely.

11 Q. Does that provide you a tactical advantage over him
12 if he's on the floor?

13 A. Yes, sir.

14 Q. Have you ever known of weapons to be hidden in couch
15 cushions?

16 A. Yes, sir. When I was a patrol officer back on the
17 east side, myself and a female officer made a family
18 disturbance call. During that family disturbance call, the
19 male that was in the house had assaulted the female.

20 When we went to arrest that male who was sitting on
21 the sofa, he started to resist and immediately shoved his hand
22 into the cushions between the back of the sofa and the seating
23 of the sofa, and when he shoved his hand in there, the next
24 thing was he was pulling it out and had a handgun in it. We
25 then became in a wrestling match with him trying to --

1 MR. WASHINGTON: Your Honor, I object to that
2 question, first of all, as not being relevant, and his
3 response is a narrative.

4 THE COURT: I think he's explaining why they did
5 certain things, and so I'll overrule the objection.

6 THE WITNESS: Immediately our goal was to make sure
7 the gun stayed inside the sofa, so we shoved it in there,
8 wrestled it away from him, and then got him into custody.

9 Q (BY MR. EAST) And are officers familiar with such
10 incidents who work on tactical teams?

11 A. Yes, sir.

12 Q. When Mr. Darden was told to get on the floor and he
13 did not get on the floor, what was a reasonable response for a
14 police officer at that point?

15 A. We then have to physically try to get him into that
16 position that we want to get him into. He's no longer paying
17 attention or never has paid attention to the verbal
18 instructions he's being given, so the only other option is for
19 us to physically put our hands on him and try to push him into
20 that position.

21 Q. Are you aware in this video that as the door is
22 breached, for an instant, Jermaine Darden raises his hands
23 about like that? (indicating)

24 A. Yes, sir.

25 Q. Would you consider that compliance?

1 A. No, sir.

2 Q. And are you aware that instantaneously after doing
3 that, he then puts his hand over the back of the sofa?

4 A. Yes, sir.

5 Q. Does that create a dangerous position for Officer
6 Snow?

7 A. It does.

8 Q. And we were talking about officers going to other
9 rooms. Other officers were passing up Officer Snow at that
10 point, correct?

11 A. Yes, sir.

12 Q. How large is Officer Snow?

13 A. Officer Snow is an average-height individual. He's
14 probably somewhere around five six, five seven.

15 Q. Are you aware that Jermaine Darden weighed 340 pounds
16 at the time of this incident?

17 A. Yes, sir, I am.

18 Q. When a suspect is -- when an officer attempts to get
19 a suspect into compliance by simply pulling on him or
20 wrestling with him and that's ineffective, do officers resort
21 to additional levels of force?

22 A. Yes, sir. There's hands techniques that we can use
23 to manipulate body parts. There's things that we can do in
24 order to try to get them into the position that we need to.
25 Either it's joint manipulation, or it's pressure points, or

1 something like that in order to get them there, and sometimes
2 it causes the staff to have to, in that joint manipulation, to
3 twist, turn, and move stuff that doesn't naturally move in the
4 natural order.

5 Q. And you're aware that nothing Officer Snow did was
6 effective?

7 A. Yes, sir.

8 Q. Did other officers join in?

9 A. Yes, sir, they did.

10 Q. Michael Johnson is a larger man than Officer Snow,
11 correct?

12 A. Yes, sir.

13 MR. WASHINGTON: Your Honor, I object, leading.

14 Q (BY MR. EAST) Is Officer Johnson a larger man -- who is
15 bigger, Officer Snow or Officer Johnson?

16 A. Officer Johnson.

17 THE COURT: Let's don't lead. That wasn't leading.
18 The first one he objected to was, so in that sense, I sustain
19 that objection. Do try to avoid asking leading questions.

20 MR. EAST: Yes, Your Honor.

21 Q (BY MR. EAST) Are you aware if Officer Johnson and
22 Officer Snow, together, had success in controlling Mr. Darden?

23 A. They did not.

24 Q. At what point did you personally become aware of the
25 struggle?

1 A. I was standing outside, like I said, on the east side
2 of the house, and I heard them call for support, which is what
3 we use when there's something that's not quite right and we
4 have a situation that somebody needs additional assistance
5 with. So at that time, I ran around the side of the house,
6 got up on the porch, and entered the front door.

7 Q. When somebody has not complied with verbal and
8 physical attempts to gain compliance, is using a device such
9 as a taser an appropriate alternative?

10 A. It's very appropriate, yes, sir.

11 Q. Is a taser designed to quickly end the struggle?

12 A. It's designed to incapacitate the neurological
13 responses to anything, which causes their muscles to not
14 respond, and which gives us another opportunity in order to
15 get them into a position where we need to get them into in
16 order to control them.

17 Q. It sort of causes the muscle --

18 THE COURT: Mr. East, the last question you asked
19 was a very leading question, and I'm going to have to tell you
20 to quit doing it, otherwise, I'm going to have to tell you to
21 be seated.

22 MR. EAST: Yes, Your Honor. I apologize.

23 Q (BY MR. EAST) What happens between the -- how long is a
24 taser cycle?

25 A. The taser will cycle itself out after 5 seconds,

1 automatically.

2 Q. And are you aware if that was successful to gain
3 compliance in this case?

4 A. It did not.

5 Q. Do you know what happened next?

6 A. Basically from -- what they had to try to do then was
7 continue the same process again in order to try to force him
8 again to the ground, and they finally eventually did get him
9 off the sofa.

10 Q. After the second taser deployment, was he continuing?

11 A. Yes, sir.

12 Q. What was he continuing to do at that point?

13 A. The same thing. He was refusing to cooperate.

14 Q. When did you put your eyes -- was it after the first
15 or second, do you know, when you put your own eyes on this
16 struggle?

17 A. When I walked into the door, he -- the second cycle
18 had already been done, and they had already had him onto the
19 floor, and he was face down on the floor.

20 Q. Was he continuing to struggle?

21 A. Yes, sir, he was.

22 Q. What did you do?

23 A. His right arm was sticking out and so I secured his
24 right arm to keep him from using that against the officers
25 while they continued to give him the verbal commands to get

1 him to roll over so they could deal something with him.

2 Q. How did you try to secure his right hand?

3 A. I just simply put my foot on top of his wrist.

4 Q. And did other officers then enter?

5 A. Yes, sir.

6 Q. And who were they?

7 A. We had a couple of patrol officers and then an
8 additional one of our own officers entered in to try to assist
9 and try to roll him over.

10 Q. And do you know if they were able to immediately then
11 handcuff him or not?

12 A. No, sir. There was four officers on him at the time
13 trying to get him into handcuffs and trying to get him secure,
14 and it took them some time in order to finally get him to a
15 position where they could put handcuffs on him.

16 Q. Are you familiar with any actions that officer
17 Michael Johnson took?

18 A. Not directly, no, sir.

19 Q. He was involved in the overall situation?

20 A. Yes, sir, he was.

21 MR. WASHINGTON: Objection, leading, Your Honor.

22 MR. EAST: I think he had already established that,
23 Your Honor.

24 THE COURT: That's okay. We don't need to make
25 comments. Just ask questions.

1 Q (BY MR. EAST) So, did the officers eventually get him
2 handcuffed?

3 A. Yes, sir, they did.

4 Q. Are there any incidents involved in the handcuffing
5 process?

6 A. There was. We had been field testing a new set of
7 soft cuffs, basically flex cuffs, and we had rigged them up to
8 make them fast, quick, and efficient. Unfortunately, in all
9 our tests they worked fine, but in a real-life situation, they
10 actually malfunctioned, so we had to transition from the flex
11 cuffs, actually, to the standard metal handcuffs in order to
12 get him secured.

13 Q. After the -- and how many pairs of handcuffs were
14 used?

15 A. Two because of the size of his -- the size of his
16 shoulder width and the size of his body, his arms would not
17 come together close enough, so we actually had to use two sets
18 in order to get him secured.

19 Q. Instead of -- did anybody try to force his arms
20 together and use one?

21 A. We did, but it just -- it wasn't working.

22 Q. And for that reason --

23 A. For that reason, in order to make it and to get it
24 done so that we could get him into a better position, we used
25 two sets of handcuffs, one on each wrist, and then tied them

1 together.

2 Q. And after he was handcuffed, what did you do?

3 A. He was immediately sat up and rested against Officer
4 Chuck Brady's leg.

5 Q. And was any other force used whatsoever by any police
6 officer after that?

7 A. No, sir.

8 MR. EAST: Pass the witness.

9 THE COURT: Do you have any questions of this
10 witness?

11 MR. THOMAS: Just a few, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MR. THOMAS:**

14 Q. Lieutenant, did you observe Officer Romero enter the
15 home?

16 A. He was in front of me as we went in, yes, sir.

17 Q. Okay. Was he initially assigned to the perimeter?

18 A. Yes, sir.

19 Q. Outside the front door?

20 A. Yes, sir.

21 Q. And did you observe him taking any actions with
22 regard to trying to get Mr. Darden handcuffed?

23 A. I knew that there were officers there on the ground,
24 but I didn't pay a specific attention to what each one was
25 doing.

1 Q. And why not?

2 A. My responsibility is not only what was happening
3 there, but what was happening around the rest of the house, as
4 well as what's happening outside. So my attention was -- I
5 couldn't focus on one particular thing. I had to focus on
6 several things at once.

7 Q. And once you got in the room, did you observe Officer
8 Romero taking any action with regard to Mr. Darden?

9 A. I knew he was there and trying to roll him over and
10 trying to help him get his arms behind his back.

11 Q. And at that point, how many other officers were there
12 attempting to do that?

13 A. There was at least three other officers on top of
14 him.

15 Q. Did you observe Officer Romero kicking Mr. Darden?

16 A. I did not.

17 MR. THOMAS: Pass the witness, Your Honor.

18 THE COURT: Okay. Do you have any questions,
19 Mr. Washington?

20 MR. WASHINGTON: Yes, sir.

21 **CROSS-EXAMINATION**

22 **BY MR. WASHINGTON:**

23 Q. I'm going to follow up really quick on the first
24 question, the last question he asked you, did you observe
25 Officer Romero kicking Mr. Darden.

1 You're not saying that you saw everything that
2 Officer Romero did, are you?

3 A. No, sir.

4 Q. So he could have kicked him and you just wasn't aware
5 of it?

6 A. Yes, sir.

7 MR. WASHINGTON: Your Honor, may I approach the
8 witness, please? I just want to put the binder --

9 Q (BY MR. WASHINGTON) I've handed to you the binder. In
10 front of you is Trial Exhibit Number 10. Can you please take
11 a look at that one?

12 A. Yes, sir.

13 Q. You had the opportunity to observe Mr. Darden, didn't
14 you?

15 A. Yes, sir.

16 Q. And when you observed Mr. Darden, I think you stated
17 that he was in a seated position. Did you observe that he had
18 blood coming from his mouth and was on his stomach?

19 A. When he was -- after the handcuffing was done, he was
20 sat up, and yes, sir.

21 Q. You observed that?

22 A. Yes, sir.

23 Q. And I think you also indicated that after the
24 handcuffs were on Mr. Darden --

25 THE COURT: I think one of the things that we talked

1 about earlier is not repeating what he said earlier. In other
2 words, you don't repeat his testimony. Ask him a question if
3 you have a question.

4 MR. WASHINGTON: Sure.

5 Q (BY MR. WASHINGTON) Now, at the point that Mr. Darden
6 was propped on, I think you said Officer McDonald, was
7 Mr. Darden doing anything at that moment?

8 A. At that moment, was simply resting on Officer Brady's
9 leg. He was sitting there in an upright position.

10 Q. Was he responsive? Was he saying anything?

11 A. Yes, sir.

12 Q. What did he say?

13 A. I don't recall exactly. We were asking him questions
14 on how he was feeling and he was responding to the questions.

15 Q. So, if we looked at this video, you're saying that in
16 that video it is -- there are officers talking to Mr. Darden
17 after he's in a seated position?

18 A. Yes, sir.

19 MR. WASHINGTON: Your Honor, may we approach?

20 THE COURT: Yes, you can approach.

21 (Bench conference on the record, out of the hearing
22 of the jury, as follows:)

23 MR. WASHINGTON: Your Honor --

24 THE REPORTER: I need you in the microphone.

25 MR. WASHINGTON: I'm sorry.

1 Your Honor, on this point, this witness has perjured
2 himself. In the video, it is clear that no one ever talked to
3 Mr. Darden. He's now -- he's now testifying under oath that
4 they were having a conversation with Mr. Darden, and the video
5 is very clear that no one said a single word to Mr. Darden.
6 And, Your Honor, I think if we're able to show this video to
7 the jury, it would show that this witness has just perjured
8 himself on the stand because that never took place.

9 MR. EAST: All right, Your Honor. This witness has
10 not perjured himself. The videos he's been reviewing to
11 prepare for trial are the ones that stop at the time he sees
12 them. He's testifying from memory that -- I'll agree that the
13 extended video does not show officers talking to Jermaine
14 Darden. This was testimony elicited by plaintiff's counsel.

15 I agree if you want to instruct the jury to
16 disregard it or say that the video does not support that there
17 were officers talking to him after the -- after he was seated
18 up, I'm fine with that. He's testifying from a memory that I
19 agree is not on this video, but that's all.

20 THE COURT: Well, I could explain to the jury that
21 the parties have agreed that the video does not show that
22 officers were talking to Mr. Darden after he was seated up.
23 I'll explain that to the jury.

24 MR. EAST: Thank you.

25 MR. WASHINGTON: That helps, Your Honor, and if you

1 could tell the witness the importance of testimony under oath
2 and we don't have to keep on approaching.

3 *THE COURT:* Well, he's entitled to give his memory.
4 His memory may be different from what the video is.

5 *MR. WASHINGTON:* Yes, sir. Thank you.

6 *(In the hearing of the jury, as follows:)*

7 *THE COURT:* The parties have stipulated that the
8 video itself does not show that officers or an officer had a
9 conversation with Jermaine Darden after he was put in a seated
10 position.

11 So that takes care of that. Okay. Go ahead.

12 *MR. WASHINGTON:* Thank you, Your Honor.

13 *Q (BY MR. WASHINGTON)* And you were talking -- I just want
14 to go over the Zero Tolerance Unit. Why is it called the Zero
15 Tolerance Unit?

16 *A.* That name was established years before, when they
17 first put it together, back when crime situation was
18 relatively high across the city. They wanted to establish a
19 unit that was responsive to the crime and would have a zero
20 tolerance effect to whatever occurred.

21 So, in the process of going into an area where crime
22 was out of control, they did not want a situation where people
23 were just simply being bypassed. That, if they were
24 committing a crime, the purpose of that particular unit was to
25 solve that issue with a zero tolerance approach.

1 Q. Now, are you aware -- you talked about training, but
2 are you aware that officers -- defendant Snow and defendant
3 Romero, and a number of individuals, say they did not receive
4 any training, contrary to what you said?

5 MR. EAST: That is absolutely untrue, Your Honor.

6 THE COURT: He's entitled to ask his questions
7 without you interrupting him.

8 MR. EAST: Misstates facts, Your Honor.

9 THE COURT: He's asked a question. You can go ahead
10 and answer him.

11 THE WITNESS: I'm not for sure what you're meaning
12 by that.

13 Q (BY MR. WASHINGTON) Defendant Snow and Defendant Romero
14 has testified under oath, during their depositions, that they
15 received no training in the Zero Tolerance Unit.

16 MR. EAST: Your Honor, I object.

17 THE COURT: Just ask him a question. Don't ask him
18 if he knows what they testified to.

19 MR. WASHINGTON: Sure.

20 THE COURT: Ask him a question.

21 MR. WASHINGTON: Right.

22 Q (BY MR. WASHINGTON) Do you dispute that they didn't
23 receive any training?

24 A. Yes, sir.

25 Q. Prior to getting this warrant executed, I think you

1 indicated about a drug buy, a drug buy was conducted at that
2 house?

3 A. Yes, sir.

4 Q. What type of drug buy was conducted?

5 A. I would not know that particularly, sir.

6 Q. But you were in charge of the Zero Tolerance Unit,
7 right?

8 A. Yes, sir.

9 Q. And you cannot tell me --

10 *THE COURT:* Let's don't argue with the witness.

11 *MR. WASHINGTON:* Okay.

12 Q (BY MR. WASHINGTON) So if a drug -- if there was
13 allegedly a drug buy, could they have just arrested that
14 person at that point without doing a no-knock warrant?

15 A. It would depend upon how the drug buy was made, on
16 how it was done, in order to establish whether or not that
17 would have been an option.

18 Q. So how was the drug buy done? Let's just establish
19 that.

20 A. It would have been contained in the body of the
21 warrant itself, and it's been too long since I've seen the
22 warrant, so I don't know exactly how it was done, but usually
23 it's done with a CI, a confidential informant, and in that
24 instance, it would not be able to make an arrest at that time.

25 Q. But you don't know sitting here today?

1 A. That's what I said, sir, yes, sir.

2 Q. And you don't know -- do you know sitting here today
3 how much drugs, if any, was found in that house?

4 A. I do not recall, no, sir.

5 Q. And in the process of executing the no-knock warrant
6 because it's dangerous to police officers, would you agree
7 that it's also dangerous to individuals in the home?

8 A. Yes, sir.

9 Q. And it would be dangerous because just simply
10 entering someone's home without their knowledge can cause a
11 serious problem?

12 A. Yes, sir.

13 Q. So in executing a no-knock warrant --

14 MR. EAST: Your Honor, we're exceeding a Motion in
15 Limine, I believe. If we may approach?

16 THE COURT: If you want to approach, you can.

17 (Bench conference on the record, out of the hearing
18 of the jury, as follows:)

19 MR. EAST: He's about to start saying --

20 THE REPORTER: In the microphone, please.

21 MR. EAST: If he's about to start saying this was
22 dangerous because there was a pregnant lady or children
23 involved, that has been limined out.

24 THE COURT: Well, we've already ruled that that
25 won't be developed during the case.

1 MR. WASHINGTON: Your Honor, the issue, just if I
2 may briefly address the Court, Mr. East went in detail of why
3 he did this no-knock warrant and what they did before they
4 made the decision.

5 THE COURT: Okay. But the issue is you can't get
6 into how -- the fact of children and other people in the
7 residence. We're not going to do that.

8 MR. WASHINGTON: Not the children in the residence.
9 What I want to do is what did they do to confirm. I won't
10 even say children because the video shows children, so I don't
11 have to say that part. I just want -- he talks about how
12 detailed they were in getting this no-knock warrant and all
13 the things they needed to know.

14 THE COURT: We're not going to talk about what they
15 did to confirm who was in the house.

16 MR. WASHINGTON: Not who was in the house, not any
17 individuals. I'm going through the process following up to
18 what Mr. East asked him about the no-knock warrant.

19 THE COURT: Okay. Let me be sure you understand.
20 We're not going to get into do they try to figure out who is
21 in the house before they execute the warrant.

22 MR. WASHINGTON: Not individual.

23 THE COURT: Not individual, but the kinds of
24 people.

25 MR. WASHINGTON: I'm not even going to get into --

1 THE COURT: Okay. Don't even touch on that.

2 MR. WASHINGTON: Right, no people.

3 THE COURT: Is that what you're --

4 MR. EAST: I don't think he's on the same page as
5 you are, Your Honor.

6 THE COURT: I think he understands he's not to get
7 into having to do with who might be in the house or would
8 likely be in the house or who is at risk of being hurt because
9 of a no-knock warrant. You've gone into that enough. We
10 won't go into that any further.

11 *(In the hearing of the jury, as follows:)*

12 Q (BY MR. WASHINGTON) You received a phone call to execute
13 this warrant?

14 A. Yes, sir.

15 Q. And when you executed the warrant, what were you told
16 was the basis of executing that warrant?

17 A. It was a narcotics warrant for a place that they had
18 made a purchase and they wanted to do the warrant there.

19 Q. Right. And how much did narcotics -- what were you
20 aware of, the total amount of narcotics at --

21 THE COURT: I think you've already asked him that,
22 and I think he's answered the question. He said he didn't
23 know. Let's don't go over the same things you've gone over.

24 Q (BY MR. WASHINGTON) Were you aware of any lookouts?
25 Were there any lookouts at that home when you arrived there?

1 A. No, sir.

2 Q. Now, there was a report in Exhibit 145. Can you look
3 at Plaintiff's Exhibit 145, page 15.

4 THE COURT: Does he have Exhibit 125 (sic) in front
5 of him?

6 MR. WASHINGTON: I put the whole trial exhibit
7 notebook.

8 THE COURT: Okay. Has it been offered?

9 MR. WASHINGTON: That's already been offered. It's
10 already been admitted, Your Honor. I'm asking him a question.

11 THE COURT: I don't show that it's been offered or
12 admitted. 125?

13 MR. WASHINGTON: 145.

14 THE COURT: 145?

15 MR. WASHINGTON: Yes, sir.

16 THE COURT: Okay. 145, okay, go ahead.

17 MR. THOMAS: 145?

18 THE COURT: That's the autopsy report?

19 MR. WASHINGTON: Yes.

20 THE COURT: Okay.

21 Q (BY MR. WASHINGTON) Are you there?

22 A. Yes, sir.

23 Q. Now, the last paragraph, do you see where it
24 indicates that Mr. Darden was compliant?

25 A. I'm sorry, I don't have my glasses.

1 MR. EAST: Your Honor, I'll object to this as
2 there's no foundation and it's going to be calling purely for
3 speculation. We've already gone over this with Dr. Greenberg.

4 THE COURT: I think he's testing the accuracy of the
5 autopsy report, and I think he's entitled to do that.

6 Q (BY MR. WASHINGTON) Are you able to read that?

7 A. Yes, sir.

8 Q. And then it indicates that Mr. Darden was compliant?

9 A. I see a sentence here, it says --

10 THE REPORTER: I can't understand you.

11 THE WITNESS: I'm reading fast, sorry. The seated
12 became physically noncompliant.

13 THE COURT: Okay. He's answered that it said that
14 he was noncompliant.

15 MR. WASHINGTON: Your Honor, may I approach to get
16 the exhibit, please?

17 THE COURT: Well, you want to show him what you want
18 him to look at?

19 MR. WASHINGTON: Yes, to make sure --

20 THE COURT: Why don't you just read it.

21 MR. WASHINGTON: Your Honor, I don't have the book
22 with --

23 THE COURT: Read what you want him to look at.

24 MR. WASHINGTON: If I can get the exhibit notebook
25 from him just for a second?

1 THE COURT: Don't you have a copy of the autopsy
2 report on the table?

3 MR. WASHINGTON: I do not know where this autopsy
4 report is located, Your Honor.

5 THE COURT: Okay. You can come get it back.

6 MR. WASHINGTON: Sure. Okay. The last -- if you
7 look at the last --

8 THE COURT: Let's don't question him while you're up
9 there. Go back to your podium.

10 Now, do you have another question you want to ask
11 him?

12 MR. WASHINGTON: Yes.

13 Q (BY MR. WASHINGTON) Have you had the opportunity to look
14 at the last sentence?

15 A. Yes, sir.

16 Q. And in that last sentence, does it state that
17 Mr. Darden complied?

18 A. Yes, sir.

19 Q. Okay. So that would be contrary to what you --

20 THE COURT: What does it say he complied with?

21 THE WITNESS: It says, the decedent initially began
22 to comply with officers' instructions, but stood up again and
23 continued to walk into an adjacent room.

24 Q (BY MR. WASHINGTON) Okay. So that was my next question.
25 You indicated that you reviewed the video?

1 A. Yes, sir.

2 THE COURT: Let's don't go over what's happened
3 before. Let's ask questions.

4 Q (BY MR. WASHINGTON) Did you observe Mr. Darden get up
5 and walk into an adjacent room?

6 A. No, sir.

7 Q. So that would be an inconsistent statement?

8 MR. EAST: Objection, argumentative.

9 THE COURT: Let's don't argue with him. That's an
10 argument to say that's an inconsistent statement. Let's don't
11 argue. Let's ask questions.

12 Q (BY MR. WASHINGTON) Sir, would that be an inconsistent
13 statement?

14 THE COURT: Let's ask questions, not argue. Do you
15 want to go forward, Mr. Washington, or do you want to be
16 seated?

17 MR. WASHINGTON: Your Honor, I would love to go
18 forward.

19 THE COURT: Okay. Let's move on with another
20 question. Let's don't make arguments.

21 Q (BY MR. WASHINGTON) So there were -- were there multiple
22 individuals in the house?

23 A. Yes, sir.

24 Q. And there were officers who handled individuals who
25 were in the kitchen area?

1 A. Yes, sir.

2 Q. And those officers did not throw anyone to the
3 ground, did they?

4 A. Not that I'm aware of, no, sir.

5 Q. And when issuing commands to individuals, you want to
6 give them the opportunity to comply?

7 A. Yes, sir.

8 Q. You don't just throw someone on the ground after
9 initially giving a command?

10 A. That would depend. Sometimes you give people
11 commands and they automatically become combative. The instant
12 that you start talking to them, their actions do not reflect
13 the fact that they are trying to be compliant, actually. It
14 actually shows that they are being agitated and aggravated.

15 Q. Can you go to Plaintiff's Exhibit 49 that's right in
16 front of you?

17 A. Yes, sir.

18 Q. In Exhibit 49, you have a view of Mr. Darden with
19 both of his hands up?

20 A. Yes, sir.

21 Q. You also have a full view of the sofa?

22 A. Yes, sir.

23 Q. And in looking at that photo, there is no
24 weapons -- do there appear to be any weapons?

25 A. I'm not able to see one, no, sir.

1 Q. And you were aware that Mr. Darden had been punched
2 and kicked in the mouth?

3 A. At the time it occurred, no, sir.

4 Q. Did you come to later learn that?

5 A. Yes, sir.

6 Q. And would you agree that kicking someone in the mouth
7 could lead to serious injury?

8 A. Yes, sir.

9 Q. And by -- kicking someone in the mouth can result in
10 the death of someone?

11 A. No, sir.

12 Q. Kicking someone in the face?

13 A. Maybe.

14 Q. And did you observe the officers hold Jermaine's head
15 to the ground?

16 A. Yes, sir.

17 Q. And based on your experience, holding an individual
18 to the ground can cause that individual to suffocate?

19 A. No, sir.

20 Q. An obese person, would that be a dangerous position
21 to keep an obese person in?

22 A. For an extended period of time, yes, sir.

23 Q. And would it be a dangerous position with multiple
24 individual on the person's back?

25 A. No, sir.

1 Q. Are you aware if Mr. Darden hit any of the officers?

2 A. No, sir.

3 Q. Are you aware if any of the officers were ever
4 injured?

5 A. No, sir.

6 Q. Were there ever any weapons found in the house?

7 A. I don't recall.

8 MR. WASHINGTON: I pass the witness, Your Honor.

9 THE COURT: Okay. Do you have any further
10 questions?

11 MR. EAST: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. EAST:**

14 Q. Are you aware that Jermaine Darden was punched and
15 kicked in the mouth or have you heard that to be an allegation
16 in this lawsuit?

17 A. I've heard it to be an allegation in the lawsuit.

18 Q. Did you ever see that happen?

19 A. No, sir.

20 Q. Did you ever see it on the video?

21 A. No, sir.

22 Q. Do you know personally if it ever happened or not?

23 A. No, sir.

24 Q. When you reviewed the videos, is there a period of
25 time after Officer Snow initially encounters Jermaine Darden

1 where you don't see the interaction between the two of them?

2 A. Yes, sir.

3 Q. Mr. Washington asked you about multiple individuals
4 in the house and force not being used against them. Do you
5 know if those individuals complied?

6 A. Yes, sir, they did.

7 Q. When the officers entered and said get down, did they
8 all get down?

9 A. Yes, sir.

10 Q. Exhibit Number 49, is that the flinch we spoke about
11 when Jermaine Darden's hands initially go up about this high
12 before he goes back over the sofa?

13 A. Yes, sir.

14 MR. EAST: Pass the witness.

15 THE COURT: Do you have any questions?

16 MR. THOMAS: No, Your Honor.

17 THE COURT: Okay. Can this witness be excused?

18 MR. EAST: Yes, Your Honor.

19 THE COURT: Okay. You're excused as a witness.

20 Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 MR. WASHINGTON: Your Honor, I just wanted
23 to -- before you excuse this witness --

24 THE COURT: Do you have another question?

25 MR. WASHINGTON: I wanted to do an offer of proof.

1 THE COURT: You want what?

2 MR. WASHINGTON: An offer of proof.

3 THE COURT: Well, do you want to come up here for
4 some purpose?

5 Come back and be seated until we get through with
6 this.

7 *(Bench conference on the record, out of the hearing*
8 *of the jury, as follows:)*

9 THE COURT: What is it?

10 MR. WASHINGTON: Your Honor, there was some
11 testimony that we were not allowed to get in with this witness
12 with the no-knock warrant, questions that he was asked that we
13 want to be able to ask, or at least make an offer of proof.

14 THE COURT: What is it you want to develop?

15 MR. KITA: The jury --

16 THE COURT: Let's -- only one person at a time.

17 MR. WASHINGTON: Basically, we want to talk about --
18 there were a number of questions dealing with Mr. Darden being
19 nonresponsive. There is issues of the no-knock warrant of
20 what they did that we don't want to put in the presence of the
21 jury that we think they made relevant.

22 THE COURT: What do you want to ask about the
23 no-knock warrant that you haven't already asked?

24 MR. WASHINGTON: Well, there's been a number of
25 testimony that the reason they did that no-knock warrant

1 because it was a dangerous situation, so we need to be able
2 to --

3 *THE COURT:* I don't know that I heard the testimony
4 that it was a dangerous situation.

5 *MR. WASHINGTON:* He said, it's one of the
6 dangerous -- to quote Mr. East, it's one of the most dangerous
7 procedures that officers ever do and that they go
8 through -- they go through a detailed check before they
9 execute --

10 *THE COURT:* I think you've asked all the questions
11 you needed to ask or wanted to ask on that subject. You just
12 want to repeat what you've already done. What else do --

13 *MR. WASHINGTON:* I don't want to say it in the
14 presence of the jury.

15 *THE COURT:* What is it you want to do?

16 *MR. WASHINGTON:* Just make an offer of proof for
17 record purposes only.

18 *THE COURT:* What else do you want to do?

19 *MR. WASHINGTON:* That would be it, Your Honor.

20 *THE COURT:* Tell me what -- tell me what your offer
21 would be.

22 *MR. WASHINGTON:* Well, the offer of proof would be
23 what made this a --

24 *THE COURT:* Just tell me what you will expect the
25 evidence to be if you were to ask what you wanted to ask.

1 MR. WASHINGTON: Sure, yes, sir. What did you do to
2 confirm that --

3 THE COURT: Not your question, what you think the
4 evidence would be if you asked what you wanted to ask.

5 MR. WASHINGTON: The evidence would be, Your Honor,
6 that this home was not a dangerous place, that there was not
7 drugs that was purchased in this home as they have been
8 alleging, and that because this witness has now said he don't
9 know what was purchased, but he's got --

10 THE COURT: You already did all that, so that
11 wouldn't be anything new. What else did you want to offer
12 proof on?

13 MR. WASHINGTON: Your Honor, may I -- can I confer
14 with my cocounsel for a second, please?

15 THE COURT: Yes, you can confer with your cocounsel.

16 MR. WASHINGTON: Thank you.

17 *(Conferring between counsel)*

18 THE COURT: What else do you want to try and prove?

19 MR. WASHINGTON: Your Honor, that would be it, Your
20 Honor, if we can get on that information there.

21 THE COURT: Okay. Well, I think you've adequately
22 developed that. I don't think there's been any restriction on
23 your ability to develop that, and you've adequately developed
24 it, so you've made your offer of proof.

25 MR. WASHINGTON: All right. Thank you, Your Honor.

1 (In the hearing of the jury, as follows:)

2 THE COURT: Okay. You're excused. Thank you.

3 Call your next witness.

4 MR. EAST: Defendants call Officer Michael Johnson.

5 Your Honor, just an inquiry, would it be close to
6 time for the morning break?

7 THE COURT: Well, who is your next witness?

8 MR. EAST: Michael Johnson, a police officer. She
9 is getting him now.

10 THE COURT: Let's go ahead and see what we get into
11 with him. We've got to move on.

12 MR. EAST: I only made the suggestion because he's
13 going to be a little bit lengthy.

14 THE COURT: If you want to talk to me about
15 something, approach the bench and talk to me about it.

16 MR. EAST: Okay, Your Honor. Thank you.

17 THE COURT: Come up and be seated.

18 (Pause in Proceedings)

19 THE COURT: Okay. Let's go.

20 **MICHAEL JOHNSON,**
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. EAST:**

24 Q. State your name, please, sir.

25 A. Michael Johnson.

1 Q. And how are you employed?

2 A. With the City of Fort Worth as a police officer.

3 Q. And what is your current assignment?

4 A. I am a Detective with the Central Criminal
5 Investigations Unit.

6 Q. And what did you do prior to that?

7 A. I was a member of the Central Zero Tolerance Unit.

8 Q. And were you a member of that team in 2013?

9 A. Yes.

10 Q. Were officers William Snow and Javier Romero members
11 of that team in 2013?

12 A. Yes.

13 Q. Are you familiar with them?

14 A. Yes.

15 Q. Are you familiar with the --

16 *THE COURT:* Let me suggest, let's don't repeat with
17 this witness what you went over with the last witness.

18 *MR. EAST:* Yes, sir.

19 *THE COURT:* And is that what you intend to do?

20 *MR. EAST:* Not at all, Your Honor.

21 *THE COURT:* Okay. Let's be sure we do something
22 entirely different from what we did with the last witness.

23 We've had enough repetition of things without you doing it.

24 How long do you think this witness is going to take?

25 *MR. EAST:* I intend to show the videos with this

1 witness, so it could take a bit.

2 *THE COURT:* You're going to show the video?

3 *MR. EAST:* Among other things, I will use the videos
4 with this.

5 *THE COURT:* How long do you think all this is going
6 to take?

7 *MR. EAST:* A bit of time, Your Honor. I'm not good
8 at estimating, but it will be a half an hour or so, I guess.

9 *THE COURT:* Oh, well, we better take a break. Your
10 suggestion about a break is probably a good suggestion.

11 We're going to take a 15-minute break.

12 *COURT SECURITY OFFICER:* All rise.

13 *(Jury not present)*

14 *(Recess)*

15 *(Jury not present)*

16 *COURT SECURITY OFFICER:* All rise.

17 *(Judge enters)*

18 *COURT SECURITY OFFICER:* Please be seated.

19 *THE COURT:* I want to discuss a matter with the
20 attorneys before the jury comes back in.

21 The Fort Worth Star-Telegram, the local newspaper,
22 had on the front page a story that has headlines: Trial
23 Begins in Brutality Lawsuit Against Fort Worth Police
24 Officers, and it says continued on to another page, and it's a
25 rather lengthy article.

1 I was curious to see what the online Star-Telegram
2 would show relative to the trial, and I had one of the staff
3 members get the online version pulled up.

4 The first thing you see when the online version of
5 the Star-Telegram is pulled up is a photograph of
6 Mr. Washington with the family members of the Darden family
7 seated around him, and then you see the video that has been
8 discussed from time to time of the event.

9 The only difference is the online version plays the
10 video starting with the very beginning when the officers are
11 in the van going to the Thannisch Street property. I didn't
12 watch the whole thing because I didn't have time to do it, but
13 apparently it looked like it would be the whole video from the
14 very beginning to the end.

15 I'm concerned. Do you have any -- I'll ask the
16 plaintiffs and the defendants, do you have any idea,
17 Mr. Washington, how the Star-Telegram would have gotten that
18 video?

19 *MR. WASHINGTON:* I have no idea, Your Honor.

20 *THE COURT:* Do you have any idea how the
21 Star-Telegram would have gotten that video?

22 *MR. EAST:* No, Your Honor, not at all.

23 *THE COURT:* Do you, Mr. Thomas?

24 *MR. THOMAS:* No, I do not, Your Honor.

25 *THE COURT:* Mr. Kita, do you have any idea?

1 MR. KITA: Yes. I know the New York Times --

2 THE COURT: Come up to the --

3 MR. KITA: I know the New York Times did a big
4 expose' article several years ago about cases involving tasers
5 and taser deaths all over the country, and the video -- this
6 is back in 2012 maybe -- well, couldn't be '12 -- 2014, and I
7 just remember that it was online somewhere.

8 So, I mean, I know from experience that if you
9 Google Jermaine Darden, Fort Worth, you'll get links to other
10 places that have posted that video just because it's --

11 THE COURT: Okay. My question was: Does anybody
12 know how the Star-Telegram got it?

13 MR. KITA: Oh, the answer is, no, I do not know how
14 the Star-Telegram got it, but that was my --

15 THE COURT: How did the media get it?

16 MR. KITA: I don't know that either, Your Honor.

17 THE COURT: Okay. That's fine. You've answered my
18 question. It's a puzzler.

19 Does anybody think that the Court should take any
20 action in reference to this publicity concerning the case? If
21 so, let me know now because we need to deal with it before we
22 go any further, if any action needs to be taken.

23 Mr. Washington, do you think there's any action the
24 Court should take relative to this publicity that all of a
25 sudden exists?

1 MR. WASHINGTON: Your Honor, in all fairness, I have
2 not seen it. I mean, perhaps if we just had two minutes to
3 see the article the Court is referring to?

4 THE COURT: Here's the -- I'll let you look at my
5 copy of the Star-Telegram.

6 MR. WASHINGTON: Sure.

7 THE COURT: And the video, the online version, it's
8 at the bottom of the first page.

9 MR. WASHINGTON: Yes, sir.

10 THE COURT: The online version is what I've just
11 described.

12 MR. KITA: In full disclosure, Judge, when I got
13 back to my office last night, I had a message from my
14 secretary that said someone from the Star-Telegram had called
15 me. I obviously didn't return it. I was here all day long.
16 But I have a personal practice of never doing that, just in
17 fear that somehow something like this might happen and they
18 would say that Matt Kita was talking to a reporter about a
19 case while it was going on. So, they may have reached out to
20 our respective offices, but nothing came from mine, I can
21 assure you that.

22 THE COURT: Okay.

23 MR. EAST: Your Honor, this morning, right
24 before I came over, I pulled up the online Star-Telegram. I
25 did not see the video on the link. I saw the text, and I

1 read the text, and the text has a number of inaccuracies, a
2 number of statements about court rulings that are inaccurate,
3 and it talks about evidence that -- it talks about
4 Mr. Briskin's (phonetic) testimony, which never came into this
5 case. It's a very un- --

6 *THE COURT:* Well, I think it's inappropriate for
7 these news articles to be published during the middle of a
8 trial because the newspaper reporter knows that the members of
9 the jury will be exposed to those articles, but I don't -- I
10 can't control what newspaper reporters do.

11 The question is: Do I need to do something relative
12 to the jury because of what's happened?

13 *MR. EAST:* And I don't know, other than if the Court
14 wanted to inquire if members had seen it or not.

15 *THE COURT:* Pardon?

16 *MR. EAST:* If the Court wanted to inquire of the
17 jury if jury members had seen this or not.

18 *THE COURT:* I'm sure every one of them has seen the
19 newspaper article. The Star-Telegram has a wide publication
20 throughout the northern -- northeastern or northwestern part
21 of the state. I'll be surprised if any of them have not seen
22 it, so I think we just get into a lot of talking if the
23 question is whether they have seen it.

24 *MR. WASHINGTON:* Your Honor, if I could make a --

25 *MR. EAST:* Then I think --

1 *THE REPORTER:* One at a time.

2 *MR. EAST:* I think they could be instructed again
3 that they shouldn't be reading news articles about this case,
4 and if they do, nothing in there is evidence.

5 *THE COURT:* Well, I thought I had instructed them at
6 the beginning not to do -- read or -- read articles or listen
7 to anything about the case. I thought I had done that. It
8 wouldn't do me any good to do it again, I don't think.

9 *MR. EAST:* And given that instruction, that's why I
10 wondered if inquiring of them would make sense because if they
11 followed the instructions --

12 *THE COURT:* What are we going to do if they say they
13 have read it?

14 *MR. EAST:* I would have a concern, Your Honor.

15 *THE COURT:* Pardon?

16 *MR. EAST:* I would have a concern if that's the
17 case, if they disregarded the Court's instructions.

18 *THE COURT:* Well, what would you do?

19 *MR. EAST:* I would consider a mistrial if they
20 admitted that they had disregarded the Court's instructions
21 and read a newspaper article.

22 *MR. WASHINGTON:* Your Honor, may I make a brief
23 suggestion?

24 *THE COURT:* Yes.

25 *MR. WASHINGTON:* Your Honor, I think the Court has

1 properly instructed the jury on not to do any independent
2 researching. I think by bringing this attention to the jury's
3 attention now only convince or perhaps encourages a juror to
4 go look at the Star-Telegram, so I think the Court's
5 instructions that you have already given has been appropriate.

6 *THE COURT:* Does anybody want to make a motion in
7 relation to what we've been talking about?

8 *MR. KITA:* Can the four of us talk really quickly,
9 Judge?

10 *THE COURT:* Pardon?

11 *MR. KITA:* Can we discuss something really quickly?

12 *THE COURT:* You and Mr. Washington want to discuss
13 something?

14 *MR. KITA:* With Mr. East and Lee.

15 *THE COURT:* With the other side?

16 *MR. KITA:* Yes.

17 *THE COURT:* Well, yeah, if y'all want to discuss
18 something, you're welcome to.

19 *(Counsel conferring)*

20 *THE COURT:* Okay. The attorneys have conferred.

21 Does anybody have a request of the Court to do
22 anything?

23 *MR. THOMAS:* Your Honor, I don't have any motions
24 that I would care to make at this time. I'm hopeful that the
25 jury can follow your instructions with regard to what evidence

1 they may consider, and I still have faith that they can do
2 that.

3 *THE COURT:* Do you have any action you want the
4 Court to take, Mr. East?

5 *MR. EAST:* I'll leave it to the Court's discretion,
6 Your Honor. Nothing specific for me.

7 *THE COURT:* Well, I'm inclined to think that
8 Mr. Thomas is correct, that we've got a good enough jury that
9 they are going to follow the law and the facts and reach a
10 decision based on the evidence in this case.

11 *MR. EAST:* Very well.

12 *THE COURT:* Mr. Washington, do you or Mr. Kita have
13 any suggestions as to anything the Court might do?

14 *MR. WASHINGTON:* Your Honor, the Court's given the
15 proper instructions. We don't think any additional
16 instructions, so we're fine with it how the Court handles it.

17 *THE COURT:* Okay. And I don't think there's a lot
18 to gain, if anything, by asking members of the panel if they
19 have looked at the news media, the Star-Telegram website or
20 the newspaper. I don't think anything is to be gained by that
21 because every one of them probably has read at least the
22 newspaper. I can't imagine them not reading it, if it's on
23 the front page.

24 *MR. THOMAS:* I agree.

25 *THE COURT:* So let's leave it at that. I've

1 expressed my concerns about it and I've gotten your views, so
2 we're going to bring in the jury and proceed.

3 MR. THOMAS: Thank you, Your Honor.

4 MR. WASHINGTON: Thank you, Your Honor.

5 (Pause in Proceedings)

6 COURT SECURITY OFFICER: All rise.

7 (Jury present)

8 COURT SECURITY OFFICER: Please be seated.

9 THE COURT: Okay. You may proceed.

10 MR. EAST: Thank you, Your Honor.

11 **DIRECT EXAMINATION CONTINUED**

12 **BY MR. EAST:**

13 Q. Officer Johnson, I honestly forget. We've already
14 introduced you to the court, correct?

15 A. Correct.

16 Q. Okay. And at the time we established what you were
17 doing in 2013?

18 A. Yes.

19 Q. Okay. All right. So with respect to the incident in
20 this case, what was your job on that date?

21 A. My role was as a team leader for the Zero Tolerance
22 Unit and the planning and briefing for this search warrant.

23 Q. While -- after you learned of the situation and what
24 you were going to do, do you know what Officer Danford was
25 doing in the meantime?

1 A. Officer Danford was completing a search warrant and
2 having it signed by a judge.

3 Q. Did you receive that later?

4 A. Yes, I did.

5 MR. EAST: May I approach, Your Honor?

6 THE COURT: Yes. You approach one time.

7 MR. EAST: Thank you.

8 Q (BY MR. EAST) I hand you what's been marked as Trial
9 Exhibit Number 137. Do you recognize that document?

10 A. Yes.

11 Q. What is that?

12 A. It is the search warrant for the address on
13 Thannisch.

14 Q. And what use did you make of that document?

15 A. That it was a search warrant for us to execute at the
16 address of 3232 Thannisch Avenue.

17 Q. And did you have this document when you briefed the
18 team or are you the officer who briefed the team?

19 A. Yes, I am.

20 Q. At the time, did you have this document?

21 A. Yes.

22 Q. Did you rely on what was in this document?

23 A. Yes.

24 Q. Is it the job of the tactical team to reinvestigate
25 the narcotics case?

1 A. No.

2 Q. Do you rely on the information provided to you by
3 those narcotics officers?

4 A. Yes.

5 Q. Was this search warrant signed by a judge?

6 A. Yes.

7 MR. EAST: Your Honor, defendants would offer Trial
8 Exhibit Number 137.

9 THE COURT: It's received.

10 MR. EAST: Thank you, Your Honor.

11 Q (BY MR. EAST) The first two pages of that document are
12 what, in particular, as opposed to the rest of it?

13 A. I'm sorry, say it again.

14 Q. I'm sorry. Look at pages -- look at the heading on
15 page number 1. What does that say?

16 A. Search Warrant.

17 Q. Then turn to page number 3, and what is that
18 document?

19 A. It's a supporting affidavit.

20 Q. Okay. Explain that to the -- for us, please.

21 A. It's the facts and circumstances that substantiate
22 the search warrant, necessity for the search warrant.

23 Q. And had you reviewed this when you briefed the team?

24 A. Yes.

25 Q. Does this describe in that affidavit -- whose

1 affidavit is that?

2 A. It is delivered by Officer Danford.

3 MR. WASHINGTON: Your Honor, if he's going to
4 testify to that, I'm going to object to that as being hearsay.

5 MR. EAST: The document is in evidence, Your Honor.

6 THE COURT: I'm sorry, it's in evidence. I'm not
7 sure what your objection is. It's in evidence.

8 MR. WASHINGTON: Well, the search warrant, Your
9 Honor, we asked Mr. East for a copy, and I stood up to make
10 the objection. We asked Mr. East for a copy of the exhibit.
11 It was --

12 THE COURT: I'll overrule the objection. Exhibit
13 137 is in evidence.

14 MR. WASHINGTON: Right, but we did not know that the
15 actual affidavit that he's now talking about is one we object
16 to and --

17 THE COURT: Well, that's part of the search warrant.

18 MR. EAST: These are the trial exhibits we've had,
19 correct.

20 THE COURT: What is this question, to explain why
21 they were there and what they could have expected?

22 MR. EAST: Correct, Your Honor.

23 THE COURT: Okay. It's not for the truth of what it
24 says?

25 MR. EAST: Not at all. It's for how they took it,

1 how they proceeded.

2 *THE COURT:* Okay. I'll instruct the jury that the
3 search warrant and the attachment to it, which is a part of
4 the search warrant, is to explain why the officers did what
5 they did, but it's not offered as the truth of what it says.

6 *MR. KITA:* Your Honor, can I -- I'm sorry.

7 *MR. WASHINGTON:* Your Honor, all the stuff that he's
8 not offering for the truth, are we able to redact that before
9 it goes back?

10 *THE COURT:* Pardon?

11 *MR. WASHINGTON:* The part that he's not offering for
12 the truth, are we able to redact that before that goes back to
13 the jury?

14 *THE COURT:* I don't understand what you're saying.
15 The whole affidavit is in evidence, which includes its
16 attachments.

17 Okay. You may proceed, Mr. East.

18 *Q* *(BY MR. EAST)* So, Officer, for example, the drug buys
19 that are described in this affidavit, you're not saying that
20 you have personal knowledge that they took place, correct?

21 *A.* Correct.

22 *Q.* But you do know that this is the information provided
23 to you by the narcotics unit, correct?

24 *A.* Correct.

25 *Q.* And based on the information in this affidavit and

1 the warrant attached to it, this is the basis of why your
2 tactical team was called to serve a warrant, correct?

3 A. Correct.

4 MR. WASHINGTON: Your Honor, I object to leading.
5 He's leading this witness.

6 THE COURT: What are you saying, Mr. Washington?

7 MR. WASHINGTON: Your Honor, he's asking and he
8 continues to ask a question, and he says, wouldn't you agree,
9 correct. He's leading this witness on how to --

10 THE COURT: Well, you are leading again, Mr. East,
11 and I understand how that habit's developed in this trial, but
12 don't.

13 Q (BY MR. EAST) Was this search warrant signed by a judge?

14 A. Yes.

15 Q. And do you see -- look at page 2. Do you see a
16 signature?

17 A. Yes.

18 Q. And that's the -- whose signature is that?

19 THE COURT: Let's don't get into all that detail,
20 Mr. East. We've got to move on.

21 MR. EAST: Yes, Your Honor.

22 Q (BY MR. EAST) What is described in the affidavit
23 supporting the search warrant?

24 A. Multiple drug buys from this address and a
25 description of two possible suspects from those drug buys that

1 are listed by race, sex, approximate age, and size.

2 Q. And describe those brief descriptions including race,
3 gender, and size, please.

4 A. The first one is listed as a suspect of a black
5 female, 50s, five foot two, light skin with light brown eyes.
6 The second one is listed as black male, six foot, 300 pounds,
7 heavy set, gold teeth, and early 30s.

8 MR. WASHINGTON: Your Honor, may we briefly
9 approach, please?

10 THE COURT: Well, yes, you can approach.

11 *(Bench conference on the record, out of the hearing*
12 *of the jury, as follows:)*

13 MR. WASHINGTON: Your Honor, when we last came up
14 here, we were going to get into the warrant and the people who
15 was in the house, and we were asked to stay away from
16 describing or talking about the individuals who was in that
17 house, and now the question that's being asked of this witness
18 is describing, in the warrant, the individuals who was in that
19 house, which we were --

20 THE COURT: Okay. If you're making an objection,
21 I'll overrule the objection. I've already explained to the
22 jury the purpose of the questioning of this witness on the
23 basis of the warrant has to do with why they were there and
24 why they did what they did, as I understand it.

25 Is that correct?

1 MR. EAST: Yes, Your Honor.

2 THE COURT: And I've instructed the jury that the
3 truth of what's in it is not to be -- they are not to consider
4 what it says as to the truth of the matter asserted.

5 Okay. Y'all can be seated.

6 MR. WASHINGTON: Thank you, Your Honor.

7 *(In the hearing of the jury, as follows:)*

8 Q (BY MR. EAST) So when you briefed the team, did you
9 convey some of the information to them that you gleaned from
10 these documents?

11 A. Yes. That included the description of the possible
12 suspects involved at that address.

13 THE COURT: Mr. East, you've asked that question
14 earlier. He's answered it earlier. Let's don't go over what
15 you've already done.

16 Q (BY MR. EAST) So when the team went to serve this
17 warrant, what was your role in that service?

18 A. My role was, as team leader, to make sure the team
19 executed the warrant as it was planned and to make sure all
20 the jobs were done while the execution of the warrant was
21 going on.

22 Q. Were you one of the officers who entered the house?

23 A. Yes.

24 Q. And where did you go when you entered?

25 A. I was the last member of the team to enter the front

1 door, and I went to the front room and stayed in that general
2 area to start.

3 Q. Did you notice something in the first room later?

4 A. When I got to the first room -- my primary job was to
5 facilitate the movement of the team through the house. After
6 a quick glance of all the different ways to move from the
7 front door into the house, I saw Officer Snow detaining a
8 black male on the couch in the front room.

9 Q. I'm going to play for you two videos. One, the jury
10 has already seen. The first one, the jury has already seen.
11 Have you seen these videos before?

12 A. Yes.

13 (Exhibit 138 played and paused)

14 Q. And what are we seeing here?

15 A. This is the entry team moving from the van to the
16 front door of the target residence.

17 Q. When you make such an entry, do you know what's on
18 the other side of that door?

19 A. No.

20 Q. What are the possibilities?

21 A. The possibilities are endless. It could be an empty
22 house, it could be 40 people inside, it could be anything in
23 between. It could be furniture, no furniture. There could be
24 weapons, there could be no weapons, there could be anything
25 and everything behind that door.

1 Q. Is the purpose of a no-knock warrant -- what's the
2 purpose of a no-knock warrant?

3 A. To allow us a safer entry into a residence that's a
4 higher risk than average.

5 (Exhibit 138 played and paused)

6 Q. Do you know who had the ram?

7 A. I believe that was, at the time, Corporal Sutherland.

8 Q. And do you know who the first officer through the
9 door is?

10 A. I believe it's Officer Snow.

11 (Exhibit 138 played simultaneously with questioning)

12 Q. And what words have you heard yelled so far?

13 A. Police, get down, or some variation of those words.

14 Q. Have you heard get down, get on the ground?

15 A. Yes.

16 Q. Do you see Mr. Darden there?

17 A. Yes.

18 Q. Are his hands up?

19 A. Looks like they are draped over the back of the couch
20 or in front of him.

21 Q. And has -- have you heard numerous commands, get on
22 the ground, at this point?

23 A. Yes.

24 Q. Is Mr. Darden on the ground?

25 A. No.

1 Q. And it appears -- I'm mistaken, this may be the video
2 the jury has not yet seen, but we'll play both of them.

3 Just so we'll know what we're seeing, what in general
4 is happening here?

5 A. The officer is checking all places that a person
6 could be hiding.

7 Q. As opposed to the search a narcotics team conducts,
8 what are you guys doing at this point?

9 A. We are only looking for people to make the residence
10 safe for the later search for evidence.

11 Q. Are you aware if anybody tried to flee this property?

12 A. I'm not aware if anybody did or not.

13 Q. And what are we seeing here?

14 A. In the front room is where the altercation is still
15 ongoing, trying to take Mr. Darden into custody.

16 Q. And on this video, we're 38 seconds into the video,
17 correct?

18 A. Yes.

19 Q. And so this video has not been showing the struggle
20 up until this point, correct?

21 A. Correct.

22 Q. And who was involved in the struggle from the
23 beginning, to your knowledge?

24 A. Officer Snow and myself.

25 Q. After -- was Officer Snow there by himself initially?

1 A. He was there by himself, yes, to start.

2 Q. And then what happened?

3 A. When I came into the room and saw the altercation and
4 Mr. Darden wasn't being compliant, and Officer Snow was by
5 himself, I joined the altercation to help get him into
6 custody.

7 Q. So were you the first officer to help Officer Snow?

8 A. Yes.

9 Q. What did you do to help Officer Snow?

10 A. I verbalized the commands that he was giving, to make
11 sure he was clear on what needed to be done, from his
12 behavior. He wasn't complying. He wasn't getting down. He
13 wasn't following the directions. I attempted to physically
14 assist him to the ground, assist Officer Snow with what he was
15 trying to do to get him onto the ground.

16 Q. Why didn't you and Officer Snow just hold him down?

17 A. Because he outweighed, I think both of us combined,
18 and he wasn't complying.

19 Q. Did you attempt just to hold him?

20 A. I attempted to hold him. At one point, we got him to
21 the ground. He pushed himself up into a push-up position with
22 both myself and Officer Snow on his back.

23 Q. Did somebody, you or somebody else, call for a taser
24 deployment?

25 A. Somebody did, after the struggle had lasted for

1 longer than it probably should have. The -- somebody from
2 behind me said to use a taser. Once that was said, I realized
3 that was the best idea based on his size and the fact that two
4 or more of us weren't having any luck restraining him.

5 When we heard that, Officer Snow took his taser out
6 and gave the taser command so we were all aware of what was
7 going to happen next. We all disengaged from the fight,
8 because if we're touching him when the taser goes off, we also
9 get the electric current as well. We took our hands off, the
10 taser is deployed, he goes partially down, and we tried to
11 take him into custody at that point using the taser as the
12 means to do so.

13 Initially, it did not work. The taser functioned
14 properly, but he didn't -- to cause him to comply. We still
15 had to struggle to get his arms. He still -- once the taser
16 stopped cycling, he went back to the same behavior he was
17 doing before the taser went off, pushing himself back up into
18 a push-up position and not complying, not giving us hands, and
19 not complying with our directions.

20 Q. Is a 38-second struggle in your business, especially
21 in this situation, a lengthy struggle or not?

22 A. It's a very lengthy struggle.

23 Q. What do you expect to happen when you go into a house
24 like this?

25 A. Most times everyone complies with our initial

1 commands coming through the door, to get down and to show us
2 your hands. Once everybody complies, we make sure there's no
3 one hiding and causing anything else to be unsafe. We take
4 everybody into custody, we move to a safer location, and then
5 we proceed with the investigation from there, which usually
6 takes very little time at all.

7 Q. Were you aware of any health problems or heart
8 conditions, Officer, that Mr. Darden may have had before you
9 were able to secure him?

10 A. At some point during the struggle, there were people
11 that were saying that he has asthma.

12 Q. Did that tell you that he had a heart problem?

13 A. No.

14 Q. And did that cause you to say, we're not going to
15 continue trying to struggle with him?

16 A. No.

17 Q. Would such -- hearing such things alleviate your fear
18 about whether or not he may be able to reach for a weapon or
19 not?

20 A. Not at all.

21 Q. Can you explain that?

22 A. In my personal experience, not having asthma and not
23 being a doctor, my personal experience dealing with someone
24 who is experiencing an asthma attack or something related to
25 that, on duty, is that they are less likely to be

1 confrontational and less likely to do anything physical
2 because of --

3 MR. WASHINGTON: Your Honor, I object to this, this
4 line of questioning. This individual has not been designated
5 as a medical expert. He's speculating and he's giving an
6 opinion.

7 MR. EAST: I'll withdraw that question. That's not
8 where I was going or where I need to go.

9 THE COURT: I'll overrule the objection. You may
10 proceed.

11 MR. EAST: All right. Thank you, Your Honor.

12 Q (BY MR. EAST) Can you tell the jury why you didn't
13 simply just --

14 THE COURT: Let's start your question over again.

15 Q (BY MR. EAST) Can you please state why you simply didn't
16 just stop trying to physically restrain him when you heard
17 somebody say he has asthma?

18 A. Because he was still being noncompliant. He was
19 still able to retrieve a weapon, if there was one, if he was
20 intending to. He was still actively fighting us.

21 Q. And somebody saying it, whether it's true or not, you
22 don't know what his -- do you know what his intentions were at
23 the time?

24 A. No. All we knew was what his actions were at the
25 time, which was continuing to fight.

1 Q. Thank you. I'll play the video from this point.

2 (Exhibit 138 played simultaneously with questioning)

3 Q. Do you know where you are yet?

4 A. I can't tell for sure, no.

5 Q. Was that a taser deployment we heard?

6 A. Yes, it sounded like it.

7 Q. Have you heard additional commands being yelled?

8 A. Yes, many commands to get down and show us your hands
9 and get your hands up.

10 Q. What do you see Mr. Darden doing there?

11 A. Pushing himself back up off the ground and not
12 complying.

13 Q. And that's after the taser cycle had stopped?

14 A. Yes.

15 Q. Were officers still trying to hold him down at that
16 point?

17 A. It looks like it, yes.

18 Q. Did you hear words, hit him again?

19 A. I couldn't hear them, no, but I heard the taser
20 sound.

21 Q. So at this point, he is fully up on his knees. Did
22 you see that?

23 A. Yes.

24 Q. Is that where Lieutenant Verrett comes in?

25 A. Yes.

1 Q. I'm sorry, who was the officer that put his foot on
2 his hand?

3 A. The one with his foot on Mr. Darden's hand is
4 Lieutenant Verrett.

5 Q. Is the struggle over at this point?

6 A. No.

7 Q. At this point, to finish the process, all Mr. Darden
8 had to do was what?

9 A. Put his hands behind his back.

10 Q. And what do we see right there?

11 A. He tightened up his arm like he pulled it away again.

12 Q. Do you know who these officers are up towards his
13 head?

14 A. The two in the top right look like Officer Brewer and
15 Officer Kaether, I believe.

16 Q. And who were they?

17 A. They were patrol officers that we had assisting us
18 that day.

19 Q. Were they part of the entry team?

20 A. No.

21 Q. And so why are they in the house?

22 A. Because they could see, through the open door, the
23 struggle, and how long it continued to go on, that they
24 knew that we needed more --

25 MR. WASHINGTON: Your Honor, I'm going to object to

1 this. This witness is speculating. He doesn't know why
2 they -- well, it calls for speculation.

3 *THE COURT:* What was the question?

4 *MR. EAST:* If these officers weren't part of the
5 original entry team, why they would be in the house, and he
6 was explaining that.

7 *THE COURT:* Do you have knowledge on that subject?

8 *THE WITNESS:* Yes, sir.

9 *THE COURT:* Okay. What is the answer? I'll
10 overrule the objection.

11 *THE WITNESS:* That those two officers were the ones
12 that I assigned to the perimeter duties, and their job is to
13 be in the front yard during the entry, unless they are needed
14 somewhere else, and their job is to assist us in whatever job
15 we need to do, and they could tell from their vantage point
16 that the job they needed to do at the time was to assist with
17 the struggle.

18 *Q (BY MR. EAST)* Do you know who this officer is here?

19 *A.* That looks like Officer Brady, I believe.

20 *Q.* Okay. So you stated that this officer, whoever this
21 is, has his arm and he's attempting to do what?

22 *A.* To handcuff Mr. Darden.

23 *Q.* Okay. We'll go forward from here. What just
24 happened?

25 *A.* Mr. Darden pulled his arm away from him.

1 Q. And what happens next? What did he do there?

2 A. He pulls his arm back to the front and puts it under
3 his body, completely away from where it needed to be.

4 Q. And we're now 1 minute and 34 seconds into this
5 struggle?

6 A. Yes.

7 Q. And we are now sometime after the second taser
8 deployment, correct?

9 A. Yes, I believe so.

10 Q. How many taser deployment total were there?

11 A. I believe there were two.

12 Q. So what did he just do that we saw there?

13 A. He actively pulled his arm away.

14 Q. And where did he put it?

15 A. He put it underneath him where we couldn't see it,
16 which is also next to the couch, which gives his hand the
17 ability to reach under the couch and under his body that we
18 can't see and don't know what's available to him.

19 Q. Had he been searched at this point?

20 A. No.

21 Q. What happens when people do that with their arms
22 under their body when they are lying down?

23 MR. WASHINGTON: Your Honor, objection, calls for
24 speculation.

25 THE COURT: I'll overrule the objection.

1 THE WITNESS: Either one of two things, either
2 trying to frustrate the arrest process to keep themselves from
3 being handcuffed or to retrieve a weapon of some kind.

4 Q (BY MR. EAST) Is that an easy position to overcome, to
5 get somebody's hand out from under them?

6 A. Not at all.

7 Q. Is it common to see that happen in your experience?

8 A. Yes.

9 Q. And what was that command?

10 A. Put your hands behind your back.

11 Q. And what are officers attempting to do now?

12 A. Extract his arms from under his body.

13 Q. And the reason you identified Officer Brewer is on
14 top of him at this point is why?

15 A. To extract his arms.

16 Q. And where is he reaching?

17 A. Under his body to reach his arm.

18 Q. Does it appear to you that Mr. Darden is following
19 commands here?

20 A. Not at all.

21 Q. Do you notice anything there?

22 A. He started to pull his hand away again once that
23 first flex cuff went on.

24 Q. And you have identified Officer Kaether over here.
25 Can you see what he's doing over here?

1 A. Looks like he's trying to extract his other arm.

2 Q. I'm not sure I heard you. Say it again, please.

3 A. Looks like he's trying to extract his other arm from
4 under his body.

5 Q. Thank you. So these two officers that are near his
6 head, you're certain neither one of those are Officer Snow or
7 Romero, correct?

8 A. Correct.

9 Q. And neither one of these -- and you've already
10 testified what they are doing?

11 A. Correct.

12 Q. Did you notice an officer put his knee on
13 Mr. Darden's back momentarily?

14 A. I'm sorry, say it again.

15 Q. Did you notice the officer placed his knee on
16 Mr. Darden's upper back momentarily?

17 A. No, I didn't notice that.

18 Q. Well, it's not there at this moment, is it?

19 A. No.

20 Q. And what's going on down here?

21 A. They are trying to tighten up the plastic flex cuffs
22 on Mr. Darden.

23 Q. And can you describe, in particular, what this item
24 is that is being used?

25 A. It's a temporary plastic handcuff. They are easier

1 to use in these kind of scenarios than metal handcuffs, and
2 they are used on many entries like this where there is large
3 groups of people that need to be detained at one time.

4 Q. Lieutenant Verrett testified that these were -- they
5 were a newer item that was being tested or in an early phase,
6 I guess?

7 A. Yes.

8 Q. And I may have passed the point, but did you notice
9 something happen to those cuffs when he was trying to apply
10 them?

11 A. Yes. They are a little hard to maneuver and they are
12 hard to get closed.

13 Q. So what's he doing there?

14 A. Because of Mr. Darden's size, since the plastic ones
15 failed -- it looks like the closing ring broke off when he
16 tried to tighten them up -- he's going to use metal handcuffs,
17 and because of Mr. Darden's size, he's using two sets of metal
18 handcuffs because of the distance between the wrists.

19 Q. And why are officers continuing to hold him at this
20 point?

21 A. To make sure his hands stay there and he doesn't pull
22 them back under his body.

23 Q. Is he fully handcuffed at this point?

24 A. No, he's not.

25 Q. Is this Officer Snow?

1 A. Yes.

2 Q. Has he been on his feet that whole time?

3 A. I'm sorry?

4 Q. Has he been on his feet that whole time?

5 A. It looked like it, yes.

6 Q. Why would he continue to be holding the taser, even
7 after he's fired the probes?

8 A. The probes are still attached through those wires to
9 the taser in his hand, and if -- up to that point, if he
10 needed to recycle the taser and have another five seconds of
11 taser deployment, he could pull the trigger and have another
12 electrical charge go through, if needed.

13 Q. And that charge would have gone through the wires
14 that were already attached to Mr. Darden?

15 A. Correct.

16 Q. And even after watching -- we're now at 2 minutes and
17 50 seconds. Do you see that?

18 A. Yes.

19 Q. Even after watching the last major portion of that
20 struggle, did Officer Snow ever redeploy the taser?

21 A. No.

22 Q. It would have been a possible option, correct?

23 A. Yes.

24 Q. But he did not and he allowed the other officers to
25 manually handcuff him?

1 A. Yes.

2 Q. And that's the end of that video.

3 (Exhibit 138 concluded)

4 MR. EAST: I have a little difficulty -- oh, I'm
5 sorry. Let me do it this way.

6 Now I will play --

7 THE COURT: What exhibit number was the one you just
8 played?

9 MR. EAST: I'm almost certain it was 138, and that
10 is 18 -- yes, Your Honor, I just played 138.

11 THE COURT: Okay. Go ahead.

12 MR. EAST: And this will be Number 1, Exhibit Number
13 1.

14 MR. WASHINGTON: Your Honor, just one clarification.
15 On the video that was already played, we get to play these
16 videos twice?

17 THE COURT: Are you asking a -- are you wanting
18 something to talk to the Court about? Come up here.

19 MR. WASHINGTON: Sure. Sorry about that, Your
20 Honor.

21 *(Bench conference on the record, out of the hearing*
22 *of the jury, as follows:)*

23 THE COURT: What was the question?

24 MR. WASHINGTON: Are we going to be able to play the
25 same videos multiple times?

1 MR. EAST: I wasn't allowed to --

2 MR. WASHINGTON: But you got to play that video.
3 That's been played once, so --

4 THE COURT: What's the point in playing that one
5 again? I'm not saying you're not entitled to. This is your
6 case, not the plaintiff's case.

7 MR. EAST: Mr. Washington paused it on points that
8 were important to him and discussed it with his witnesses.
9 I'm entitled to one play through, per the Court's rules, to do
10 that with my witness. This is my one play through.

11 THE COURT: I just wondered why we're doing it.

12 MR. EAST: We'll be highlighting different things
13 than Mr. Washington did, obviously.

14 MR. THOMAS: Your Honor, I need to display where my
15 client is on this. You haven't heard his name even mentioned
16 yet.

17 MR. EAST: You will on this play through. This one
18 will show --

19 THE COURT: Y'all can both question him on this play
20 through, if you would like, so we don't do it again.

21 MR. WASHINGTON: Your Honor, so we don't have to
22 come back here, with the Court's permission, since the
23 majority of the questions is through the video, I would like
24 the opportunity to cross him on this video because that's
25 been --

1 MR. EAST: We're not playing it again. The Court's
2 instructions were followed by us during Mr. Washington's case
3 in chief. He got to play the video, and we got to play it
4 during hours. That's the ground rules.

5 MR. WASHINGTON: He didn't attempt to do this
6 when --

7 THE COURT: Apparently you want to play it again?

8 MR. WASHINGTON: She's gone through the stuff is my
9 question --

10 THE COURT: Okay. I'll let you -- when this one is
11 being played, if you want to ask some questions, y'all make
12 known you want to, and you can ask questions as we go along.

13 MR. WASHINGTON: Sure. Thank you, Your Honor.

14 THE COURT: That way we won't have to play it again.

15 MR. WASHINGTON: Sure. So you want me to -- I can
16 ask questions while it's going?

17 THE COURT: As it's being played.

18 MR. WASHINGTON: Okay. Thank you, Your Honor.

19 (In the hearing of the jury, as follows:)

20 (Exhibit 1 played simultaneously with questioning)

21 Q (BY MR. EAST) Okay. We're going to play the other
22 video. This is a helmet camera from a different entry team
23 officer; is that correct?

24 A. Yes.

25 Q. And this is the same entry we saw before?

1 A. Yes.

2 Q. Do you see the officer with the camera go in to the
3 right and go to the room to the right?

4 A. Correct.

5 MR. WASHINGTON: Your Honor, I would like to ask my
6 question at this point.

7 THE COURT: You want to ask a question -- ask him a
8 question.

9 MR. WASHINGTON: Yes. Yes.

10 THE COURT: Why don't y'all both stand at the
11 microphone.

12 MR. WASHINGTON: Sure.

13 THE COURT: Don't interrupt his -- I'm giving you a
14 special dispensation that you can ask some questions while
15 this is being shown, even though it's his case.

16 MR. WASHINGTON: Sure.

17 THE COURT: So don't interrupt his activities.

18 MR. EAST: I'm going to finish my questioning, and
19 then I'll let Mr. Washington go before he restart it.

20 THE COURT: Okay.

21 Q (BY MR. EAST) So this scene here, what do we see?

22 A. Multiple people in the dining room, the front room of
23 that residence.

24 Q. Okay.

25 MR. WASHINGTON: Okay. I have just brief follow-up.

1 Do you mind, Ken?

2 MR. EAST: No, I don't -- because I won't get to go
3 back. I'll move the video, but -- I'll stop it anytime you
4 want me to, and you can ask questions when it's stopped.

5 Is that fair, Your Honor?

6 MR. WASHINGTON: Well, you asked him a question.
7 There was one question prior --

8 THE COURT: Let's don't carry on between each other.
9 I'm giving you an opportunity to do something I've never done
10 before, to ask questions during and interrupt the defendant's
11 questioning, so let's don't abuse it.

12 Do you have a question you want to ask,
13 Mr. Washington, at this time?

14 MR. WASHINGTON: Yes, Your Honor, I --

15 THE COURT: Okay. Ask the question.

16 MR. WASHINGTON: It requires that -- he let the
17 video go, so I need to put the video where the entry -- where
18 they came into -- that was my --

19 THE COURT: Ask a question, if you have a question.
20 If you don't have a question, tell him, and let's move on.

21 MR. WASHINGTON: My first question is: When
22 Mr. Darden -- when y'all came into that home, you saw
23 Mr. Darden had both of his hands up?

24 THE WITNESS: I didn't, no.

25 MR. WASHINGTON: Am I allowed, Your Honor, to show

1 him that portion, the portion that I asked Mr. East to stop,
2 am I allowed --

3 *THE COURT:* You want to back up and show something?

4 *MR. WASHINGTON:* That was the portion, the first
5 portion, yes, sir.

6 *THE COURT:* Okay. Let's back up and let him ask the
7 question he wants to ask, and then we won't spend more time
8 with this.

9 *MR. EAST:* To make it not any more interruptions,
10 may we approach and clarify this?

11 *THE COURT:* Okay. Let's back up.

12 *MR. EAST:* May we approach, Your Honor?

13 *THE COURT:* Pardon?

14 *MR. EAST:* May we approach and ask one --

15 *THE COURT:* Let's back up.

16 *MR. EAST:* Okay.

17 *MR. WASHINGTON:* Prior to him backing up, Your
18 Honor, I can get my one question about this part, and then he
19 can back up and I can get my other question.

20 *THE COURT:* Ask a question about this part, if you
21 want to.

22 *MR. WASHINGTON:* Sure. Can I borrow your mouse?

23 On this question here, Officer Johnson, on this
24 table, do you see any guns or any drugs or anything on this
25 table?

1 THE WITNESS: I can't tell from the table from
2 there. It's too blurry.

3 MR. WASHINGTON: Okay. You can move back.

4 Q (BY MR. EAST) So you don't know what's in these
5 containers?

6 A. No.

7 MR. WASHINGTON: Okay. Stop. Go a little further.
8 Stop.

9 So at this point, Officer Johnson, do you see
10 Mr. Darden's hands both up?

11 THE WITNESS: I see what looks like his left hand is
12 up near his shoulder. I can't tell where his right hand is.
13 And I couldn't see that, personally. I can see it on the
14 video, but not personally. I wasn't -- I was at the very end
15 of the line, so I couldn't see this personally, no.

16 MR. WASHINGTON: So the testimony that you're
17 giving --

18 THE COURT: The video shows what it shows. Let's
19 don't spend a lot of time asking somebody what the video
20 shows. It shows what it shows.

21 MR. WASHINGTON: Right.

22 Q (BY MR. EAST) Officer Johnson, have you ever seen
23 anybody raise their hands and fight a police officer?

24 A. Yes.

25 Q. Have you ever seen anybody raise their hands and then

1 run?

2 A. Yes.

3 Q. Do you know how long Mr. Darden's hands are in this
4 position?

5 A. I have -- no, I don't know.

6 Q. And on the other videotape, when we showed from the
7 other angle, where did you say his hands were?

8 A. On the back of the couch.

9 MR. WASHINGTON: Stop. Stop there.

10 And were you able to observe this officer at this
11 point with his foot on this person's head?

12 THE WITNESS: While I was there, no, I couldn't see
13 this.

14 MR. WASHINGTON: Okay.

15 Q (BY MR. EAST) When you make an entry into a house under
16 these circumstances, why -- first of all, did you ever hear
17 Officer Snow use profanity?

18 A. No.

19 Q. Did you ever hear Officer Romero use profanity?

20 A. No.

21 Q. Why do officers use loud commanding voices?

22 A. To make sure it's very clear that we require
23 immediate compliance, immediately, with our directions.

24 Q. Are you in there concerned about hurting feelings?

25 A. No.

1 Q. What's most important?

2 A. Safety of everybody involved.

3 Q. Okay. So, from this angle, we're seeing into the
4 room where Mr. Darden is; is that correct?

5 A. Yes.

6 MR. WASHINGTON: Stop there.

7 Now, looking at this part of the video, it's moved
8 around, there is periods of time during this video that you
9 can't see everything that's going on --

10 THE WITNESS: You can't see it on the video?

11 MR. WASHINGTON: -- in the other room.

12 THE WITNESS: I could see it because I was in the
13 other room, but the video doesn't show it, yes.

14 MR. WASHINGTON: So there are things that happened
15 in the other room that this video would not be able to capture
16 or didn't capture?

17 THE WITNESS: Yes. Yes.

18 MR. WASHINGTON: Thank you.

19 Q (BY MR. EAST) And in fact, we're 27 seconds into this
20 video at this point, correct?

21 A. Yes.

22 Q. And we've only seen glimpses into the other room so
23 far?

24 A. Yes.

25 Q. And your attention at some point -- you weren't

1 watching Officer Snow -- continuously from the very beginning,
2 when you got there, your attention was caught or not?

3 A. No, because my job, when I come in last as a team
4 leader, is to make sure that I understand that the team has
5 flowed through the entire house, that we didn't miss any rooms
6 or something significant, immediately.

7 And so when I come in, my first glance is across
8 the -- everything that I can see, to make sure that I
9 understand what's going on, big picture, and that it's all
10 been taken care of as far as jobs go.

11 Q. So there was a short period of time in the beginning
12 where even -- was there a period of time in the beginning
13 where even you, on the scene, did not see the struggle begin
14 between Snow and Romero?

15 A. Correct, between Officer Snow and Mr. Darden, yes.

16 Q. Of course, Officer Snow and Mr. Darden. And what
17 drew your attention to it?

18 A. The movement that I saw that brought my eyes back to
19 the struggle that he was having because he wasn't being --
20 Mr. Darden wasn't being compliant.

21 Q. And what happens when a police officer is engaged in
22 a struggle under such circumstances? Do they focus on
23 everything around them or what happens?

24 A. No. You tend to get tunnel vision, the longer it
25 occurs, and you only focus on what's going on right in front

1 of you and you lose the big picture.

2 Q. Do you know who this officer is?

3 A. No, I can't tell.

4 Q. At this point, we're about 41 seconds into the video
5 to compare it to the other one. Watch the front door.

6 MR. WASHINGTON: Stop right here. Thank you, Ken.

7 So looking at this video, this person here would
8 have had a direct view to the living room? It's in the video
9 where I circled.

10 THE WITNESS: That person's head is facing that
11 direction, yes.

12 MR. WASHINGTON: Okay.

13 Q (BY MR. EAST) Where do you -- what's that?

14 A. Looks like somebody else coming in to join the
15 altercation.

16 MR. WASHINGTON: Stop there.

17 Q (BY MR. EAST) Do you know who that is?

18 A. I believe that's Officer Romero.

19 MR. WASHINGTON: Stop right there.

20 MR. EAST: I won't -- I won't advance until I'm done
21 asking questions, I promise.

22 Q (BY MR. EAST) Okay. So what is happening at this point?

23 A. He sees a struggle still continuing and that the two
24 of us aren't getting compliance, so he joined us to help.

25 Q. And was Officer Romero on your team?

1 A. Yes.

2 Q. And he was assigned where?

3 A. I believe he was assigned front perimeter.

4 Q. And if that's the case, in your experience what would
5 have caused him to come into the house?

6 A. That he could see in the open front door and see that
7 the two of us were struggling with somebody, that we were not
8 winning, and we needed help.

9 MR. EAST: Okay.

10 MR. WASHINGTON: And on this video at this still,
11 this person, this individual that's in this position, you
12 would agree that that person has a view into that room as
13 well?

14 THE WITNESS: I can't tell from their position if
15 that couch blocks their view or not, so I don't know.

16 MR. WASHINGTON: But you do see the person looking
17 into the room?

18 THE WITNESS: Their head is facing that direction,
19 yes.

20 Q (BY MR. EAST) So we're now --

21 MR. THOMAS: May I ask questions, too?

22 THE COURT: Yes. Come up here where you can ask
23 questions. It's going to be a three-ring circus.

24 MR. THOMAS: Thank you, Your Honor.

25 Did you see the officer just run into the room?

1 THE WITNESS: Yes.

2 MR. THOMAS: And you identified him, I believe, as
3 Officer Romero?

4 THE WITNESS: Yes.

5 MR. THOMAS: And once he reached there, do you see
6 him go down on his knees?

7 THE WITNESS: Yes.

8 MR. THOMAS: Okay. That's all I have.

9 MR. WASHINGTON: So, at this point, when Officer
10 Romero is in the room, these two individuals appear to be
11 looking in the room?

12 THE WITNESS: Which two again?

13 MR. WASHINGTON: These two individuals.

14 THE WITNESS: Their heads are facing that way. I
15 don't know what they are looking at or not looking at.

16 MR. WASHINGTON: Looking at this video, we are
17 unable to see exactly what's going on inside the main room?

18 THE WITNESS: Correct.

19 THE COURT: Mr. Washington, the video shows what it
20 shows. I'll remind all of you of that.

21 Okay. Let's move on. Mr. East, it's your turn.

22 MR. EAST: Just tell me to stop if you need
23 anything, either one of you.

24 Q (BY MR. EAST) Do you recognize what's going on here?

25 A. We're still struggling with him trying to gain

1 control of him.

2 Q. Did you hear those last words?

3 A. I couldn't hear them, no.

4 Q. Now, do you know what it was?

5 A. That was the taser command.

6 Q. And that was -- was that push-up we had seen from the
7 other angle?

8 A. Yes. That was a --

9 THE REPORTER: Was that push-up what?

10 MR. EAST: We had seen from the other angle. My
11 mouth is dry, sorry.

12 MR. WASHINGTON: In addition to the push-up, you
13 saw -- did you see an individual grab Mr. Darden by the head
14 and push his head to the ground?

15 THE WITNESS: I didn't in that part, no.

16 MR. WASHINGTON: Are you able to see the officer
17 pushing his head to the ground?

18 THE WITNESS: Looks like he had his hand on him from
19 there. You have to play it for me to look at it again. Yes.

20 MR. THOMAS: Who was that individual who pushed him
21 to the ground?

22 THE WITNESS: I have to look again.

23 MR. THOMAS: Could that have been Romero?

24 THE WITNESS: That was the same position that he had
25 been in previously, so probably, yes.

1 Q (BY MR. EAST) Under these circumstances, if Mr. Darden's
2 pushing himself up, would it be appropriate to try to push him
3 down?

4 A. Absolutely.

5 Q. Up until this point, have you seen anything where any
6 officers have done anything improper, as the team leader?

7 A. No.

8 MR. WASHINGTON: Okay. On the video, did you hear
9 that they stated a number of times that he has asthma?

10 THE WITNESS: I could hear it once on the playing of
11 it today.

12 MR. WASHINGTON: Did you hear it multiple times when
13 you were inside the home?

14 THE WITNESS: Did I hear it being said or somebody
15 specifically saying it?

16 MR. WASHINGTON: It was being said.

17 THE WITNESS: Yes, I heard it more than once being
18 said. I don't know who was saying it.

19 MR. WASHINGTON: Did you hear Mr. Darden say it?

20 THE WITNESS: I don't recall him saying it,
21 specifically, no, but I heard it being said.

22 MR. THOMAS: Once again, can you see this
23 individual, underneath the stomach of this officer, can you
24 see his knees are on the floor and his feet are almost out the
25 door there?

1 THE WITNESS: Yes.

2 MR. THOMAS: Is that the same position that Officer
3 Romero was in earlier?

4 THE WITNESS: Yes.

5 Q (BY MR. EAST) Officer Johnson, there's been testimony
6 about a kick in this case. Are you familiar with any kicks in
7 this case?

8 A. Yes.

9 Q. Can you tell us about it?

10 A. There were -- to my personal knowledge, there were
11 two kicks delivered, both by me, both to his left hand. After
12 the first taser deployment, when he pushed himself back into
13 the push-up position, I kicked at his left hand to knock his
14 leverage off to get that hand underneath him, and neither one
15 of them worked.

16 Q. Are you aware of any other kicks being delivered by
17 anybody?

18 A. No.

19 Q. Is that based on your memory from the time and your
20 subsequent reviews of the videos?

21 A. Yes.

22 Q. I think we may -- I lose track of exactly where we
23 are, but I think one of these are you, and we're going to see
24 a kick in a moment. Does that appear to be correct so far?

25 A. I believe so.

1 MR. EAST: Did you want --

2 MR. WASHINGTON: No.

3 Q (BY MR. EAST) Do you see that?

4 A. Yes.

5 Q. Who was that?

6 A. That was me.

7 Q. And your intention was to hit what?

8 A. His forearm, his left forearm and left hand, to keep
9 him from pushing himself up using that.

10 Q. Is that what you think you hit?

11 A. Yes.

12 Q. Do you have any idea what would have happened if you
13 had hit him in the face with that kick?

14 A. I'm sorry, say it again.

15 Q. Was it a forceful kick?

16 A. Yes.

17 Q. Do you know if you hit him in the face?

18 A. I do not.

19 MR. THOMAS: I've got nothing. Go ahead.

20 MR. WASHINGTON: After the kick, you can't -- you
21 don't know every single thing that Officer Romero did, so you
22 can't say if he did not kick this guy or not, can you?

23 THE WITNESS: I can say I didn't see anybody kick
24 him.

25 MR. WASHINGTON: But it could be possible?

1 *THE WITNESS:* I wasn't in the room the entire time,
2 so anything is possible, but I never saw it. I was never
3 aware of it.

4 *MR. THOMAS:* Now, if this -- if this were Mr. Virden
5 right here on the floor, and assuming his head is somewhere
6 behind this police officer here, looking into this room, what
7 side of Mr. Darden would you have been on, if you were looking
8 for him -- if you were looking into this side from this
9 direction, would it be the right side or the left side?

10 *THE WITNESS:* From his point of view, it would have
11 been the right side.

12 *MR. THOMAS:* And actually, Mr. Romero was on the
13 left side; is that correct?

14 *THE WITNESS:* Correct.

15 *Q* *(BY MR. EAST)* And was that from the cameraman's point of
16 view?

17 *MR. WASHINGTON:* Let me just --

18 *THE REPORTER:* I'm sorry, I didn't hear you.

19 *MR. WASHINGTON:* I need some brief follow-up on
20 this.

21 This is Officer Romero right here?

22 *THE WITNESS:* Yes, looks like on the left side, as
23 you're facing the screen --

24 *MR. WASHINGTON:* I understand, but this is Officer
25 Romero right here?

1 THE WITNESS: It's blurry. I can't tell what you're
2 actually circling, but that's the general position where he
3 is, yes.

4 MR. WASHINGTON: And that's on the right side of
5 Jermaine, isn't it?

6 THE WITNESS: As you're looking at it, no, it was on
7 my right side, which is this side.

8 MR. WASHINGTON: This is him here, correct?

9 THE WITNESS: I can't tell what you're circling.

10 MR. WASHINGTON: Right here, this individual right
11 here, this officer.

12 THE WITNESS: Okay. From my vantage point, and the
13 view of the camera, that's the left side of Mr. Darden, and
14 I'm standing on the right side.

15 MR. WASHINGTON: Okay.

16 Q (BY MR. EAST) And what was that?

17 A. That sounds like the second taser deployment.

18 Q. And did you hear a word spoken just then?

19 A. I couldn't tell what it was from here. I couldn't
20 tell. (Video portion replayed). I still can't hear it.

21 Q. Are you the officer that testified earlier about the
22 word "support?"

23 A. No, but that's what we use for -- if we need help,
24 that's the word that we use, so we know it's coming from
25 another officer that we need an assistance.

1 Q. So what happened shortly thereafter?

2 A. The front perimeter officers that heard the call for
3 more support come in to help.

4 Q. First is who?

5 A. Lieutenant Verrett.

6 MR. THOMAS: Can you tell who this officer is?

7 THE WITNESS: Looks like Officer Romero.

8 MR. THOMAS: And is he once again on his knees?

9 THE WITNESS: Yes.

10 MR. WASHINGTON: Stop, Ken.

11 So, again, looking at this video, you can't tell
12 just from the video what's gone on in that other room.

13 MR. EAST: Objection, Your Honor. He's just making
14 a statement. It's an argument. We've established that the
15 video shows what it shows, and it doesn't show what it doesn't
16 show.

17 MR. WASHINGTON: It's just a question asking is he
18 able to see what's gone on in this other room from this point
19 of the video.

20 THE WITNESS: I'm not sure what you're asking. I
21 was in the room, so I could see what was going on in the room,
22 yes.

23 MR. WASHINGTON: I understand. But on the video,
24 does the video capture what's gone on in the other room?

25 THE WITNESS: Some of it, yes.

1 MR. WASHINGTON: Not all of it?

2 THE WITNESS: No.

3 Q (BY MR. EAST) And what just -- did you see there?

4 A. Looks like the other patrol officers joining in to
5 help.

6 Q. And that was Brewer and Kaether we discussed earlier?

7 A. Yes, Officer Brewer and Officer Kaether.

8 Q. And we know, from the other video, they went in to do
9 what?

10 A. To assist taking him into custody by holding down and
11 extracting his arms once he pulled them under his body.

12 Q. And at this point, we're 1 minute 28 seconds into
13 this?

14 A. Yes.

15 Q. And it would have shown on the other video, but
16 it --

17 THE COURT: Ask a question.

18 Q (BY MR. EAST) Shortly between the second taser
19 deployment and -- actually, I don't remember the time. I'll
20 ask you the question. Was there a point in time when you
21 pulled out your taser?

22 A. Yes.

23 Q. Describe that.

24 A. I believe it was after the first one didn't work and
25 he still wasn't in custody and he was still struggling, and I

1 don't remember if I thought about it or somebody else said
2 something, that we needed to tase him again.

3 I wasn't sure the condition of Officer Snow's taser,
4 if he still had it in his hand, if it was still functional, so
5 when someone said that, I pulled mine out of the holster.
6 Before I -- I couldn't remember if I turned it on or not, but
7 I realized that Officer Snow's was still functional and still
8 able to be used, so he used his the second time and I put mine
9 back in the holster and didn't use it.

10 Q. If Officer Snow had not, would you have used yours?

11 A. Yes.

12 Q. Was it an appropriate time to use the taser?

13 A. Yes.

14 Q. And is this the struggle we saw earlier?

15 A. Yes.

16 Q. To accomplish what?

17 A. To extract his arms from underneath his torso.

18 Q. And do you recall this being the patrol officer?

19 A. Yes.

20 Q. And it appears he's laying across his head. We know
21 from the other video, he's doing what?

22 A. He's laying across his back with a hold on his left
23 arm to use leverage to pull that arm out from under his body.

24 MR. WASHINGTON: Can you stop it right there.

25 Officer Williams (sic), at this point this officer

1 is holding Jermaine face first?

2 *THE WITNESS:* I'm Officer Johnson, and --

3 *MR. WASHINGTON:* I'm sorry, I apologize, Officer
4 Johnson.

5 *THE WITNESS:* And could you repeat the question?

6 *MR. WASHINGTON:* Mr. Darden is being held down face
7 first?

8 *THE WITNESS:* No, I can't see his head, so I'm not
9 sure where his head is, but the officer is laid over his back
10 and shoulders to use our -- the leverage to extract an arm
11 like we're taught.

12 *MR. WASHINGTON:* But his stomach and face is facing
13 the ground?

14 *THE WITNESS:* Yes.

15 *MR. WASHINGTON:* And would that be the proper manner
16 to handle an obese person?

17 *THE WITNESS:* To handle what?

18 *MR. WASHINGTON:* To have an obese person face first
19 on the ground, would that be a manner in which to handle an
20 obese person?

21 *THE WITNESS:* An obese person, yes, if they have
22 their hands pinned under their body, you're absolutely
23 required to extract those hands. And their size only matters
24 as to how strong they are, and on this occasion, he was very
25 strong, so absolutely required that.

1 MR. EAST: I'm sorry, Mr. Thomas had a question.
2 Right there?

3 MR. THOMAS: Once again, does this appear to be
4 Officer --

5 THE COURT: Do you want us all to hear what you're
6 saying?

7 MR. THOMAS: I'm sorry, Your Honor.

8 Does this appear to be -- who is -- do you know who
9 this is right here?

10 THE WITNESS: Looks like Officer Romero.

11 MR. THOMAS: Okay. Actually -- I'm not doing too
12 well.

13 Does he appear to be preparing to handcuff?

14 THE WITNESS: Yes.

15 Q (BY MR. EAST) So does that inform (sic) your testimony
16 from the other video who was handcuffing?

17 A. Yes.

18 Q. And it was?

19 A. It was Officer Romero applying the plastic handcuffs.

20 MR. WASHINGTON: Stop there.

21 In addition to Officer Snow and Romero, were -- both
22 Officer Snow and Officer Romero is holding Jermaine down face
23 first at this point as well?

24 THE WITNESS: No, looks like Officer Romero is
25 manipulating his handcuffs.

1 MR. WASHINGTON: He's being held face down,
2 Mr. Darden?

3 THE WITNESS: He is face down, yes.

4 MR. WASHINGTON: And individuals are telling you
5 that he cannot breathe?

6 THE WITNESS: No, they were saying he has asthma.

7 MR. WASHINGTON: No one said he could not breathe?

8 THE WITNESS: They may have. I didn't hear anybody
9 say that while I was there, while I was present. I heard the
10 "he has asthma" mentioned.

11 MR. WASHINGTON: Okay.

12 Q (BY MR. EAST) To clarify, Mr. Washington asked you if
13 Officer Snow was holding him down. You already testified that
14 Officer Snow was on his feet at this point, correct?

15 A. Correct.

16 Q. And this is the point, in the other video, where
17 Mr. Darden's pulling his hand away?

18 A. Yes.

19 Q. And the point of holding him and wrestling his hands,
20 is that to stop his breathing?

21 A. No.

22 Q. It's to do what?

23 A. To maintain control of him so he cannot reach for a
24 weapon or continue to fight.

25 Q. The purpose of wrestling over --

1 THE REPORTER: I didn't understand you.

2 Q (BY MR. EAST) The purpose of laying over the top of his
3 body, wrestling to get his hand free, is to do what?

4 A. To maintain control of him so he can't reach for a
5 weapon or continue to fight.

6 Q. And ultimately to accomplish what?

7 A. To take him into custody and have him handcuffed.

8 Q. And by this point, do you see a number of individuals
9 already handcuffed in the other room?

10 A. Yes.

11 Q. And we're 2:15 into this video, and you just saw a
12 glimpse of what?

13 A. Of Mr. Darden finally being handcuffed.

14 MR. WASHINGTON: Stop, Ken, stop.

15 Q (BY MR. EAST) And this is an officer doing what?

16 A. Double-checking that we didn't miss any closets or
17 any people hiding any places that we didn't look already.

18 MR. WASHINGTON: And again, this video at the -- I'm
19 sorry, I can't see -- the 2.31 mark, there is no view of the
20 living room from this point?

21 THE WITNESS: No, it's the stove, so it would be the
22 kitchen, I guess.

23 MR. WASHINGTON: But Officer Romero and Officer Snow
24 are in the other room with Jermaine Darden?

25 THE WITNESS: I couldn't say for sure because I'm

1 looking at a stove.

2 MR. WASHINGTON: Okay.

3 Q (BY MR. EAST) But at this time on the other video, the
4 other video was showing what was happening?

5 A. Yes.

6 Q. Do you recognize this officer?

7 A. That's -- at the time, it was Officer Tabor. She's
8 now Sergeant Ricks.

9 Q. What does that call mean?

10 A. When you call secondaries, it means our primary sweep
11 of the residence has been complete. We've checked all the
12 main areas. A secondary sweep is to make sure we check the
13 smaller areas. Like we have found people hiding in cabinets,
14 so we check cabinets in the smaller areas that it's possible
15 to hide, but not as likely as the primary look. So we
16 double-check to make sure we didn't miss any bodies in the
17 house at all, no one is still hiding there, and then we call
18 it clear.

19 Q. By the time you call for secondaries, are most
20 obvious threats handled?

21 A. Yes. We only call for secondaries after the entire
22 residence has been primary swept, anybody that we've
23 encountered has been taken into custody and there are no more
24 struggles. There was no other noncompliance going on in the
25 house at all. Everyone is calm, in custody, and then we move

1 to secondaries.

2 MR. EAST: That's the end of that video.

3 (Exhibit 1 video playing concluded)

4 Q (BY MR. EAST) As the team leader, did you see anything
5 any officer did that was improper?

6 A. No.

7 MR. EAST: Pass the witness.

8 MR. THOMAS: I have no more questions.

9 THE COURT: Do you have any questions?

10 MR. THOMAS: No, Your Honor, no questions.

11 THE COURT: Do you have any questions?

12 MR. WASHINGTON: Yes, Your Honor.

13 THE COURT: Okay.

14 **CROSS-EXAMINATION**

15 **BY MR. WASHINGTON:**

16 Q. I want to make sure I get this right. Officer
17 Johnson?

18 A. Yes, sir.

19 Q. All right. Can you go to Exhibit 137?

20 A. Yes.

21 Q. And can you go to the fourth page?

22 A. Yes.

23 Q. Okay. I want you to go to paragraph 5.

24 A. Okay.

25 Q. Now, the purpose of you executing a no-knock warrant

1 is because this home was considered to be a dangerous home?

2 A. No. Basically any search warrant we serve is
3 probably going to be dangerous. We assume everything is
4 dangerous. A no-knock is specifically for a specific reason
5 articulated in the warrant.

6 Q. Because it's -- so with this no-knock warrant, was it
7 executed because you considered this home to be dangerous?

8 A. No. The information that required a no-knock entry
9 is located on page 6 in number 18.

10 Q. We're going to get to that. I want to go back. My
11 question is leading to paragraph 5 in the affidavit.

12 THE COURT: Well, you asked him some questions after
13 that. Let him answer the questions.

14 Go ahead with your answer.

15 THE WITNESS: The -- on page 6, number 18 is where
16 it shows the reason for a no-knock entry into this warrant or
17 into this residence, which is the -- it was the knowledge by
18 the officer that wrote the warrant of lookouts in the area
19 that would -- if we made a normal entry, they could tip off
20 our location and make it more dangerous and more likely we
21 were injured in the execution of this warrant, so the reason
22 that it is a no-knock is listed in item 18 on page 6.

23 Q (BY MR. WASHINGTON) So you went there because of
24 lookouts. Did you observe any lookouts when you got to this
25 home?

1 A. I did not, no.

2 Q. And on paragraph 5, it indicated -- does it indicate
3 the amount of the purchase, which would have triggered this
4 no-knock warrant?

5 THE COURT: Which purchase?

6 MR. WASHINGTON: It was a purchase -- they indicated
7 that it was a purchase of drugs that made them execute the
8 no-knock warrant. So in this affidavit, I'm asking him the
9 question.

10 THE COURT: Was there only one purchase?

11 THE WITNESS: The warrant, I believe, shows four,
12 but I wasn't part of that investigation so I couldn't say for
13 sure how many there were.

14 Q (BY MR. WASHINGTON) And what was the dollar amount?

15 A. The dollar amount listed in paragraph 5 is \$20 worth
16 of cocaine.

17 Q. So you executed one of the most dangerous
18 warrants --

19 THE COURT: Let's don't make an argument at this
20 time. Do you have another question?

21 Q (BY MR. WASHINGTON) So if there are individuals who has
22 indicated that Officer Romero kicked Mr. Darden in the mouth,
23 you have nothing to dispute that, do you?

24 A. Could you ask me the question again? I'm not clear
25 on it.

1 Q. If a number of individuals have indicated that
2 Mr. Darden was kicked in the mouth and in the face, you cannot
3 dispute what the other witnesses observed?

4 A. No, because I wasn't in the room with him the entire
5 time. I only know what I could observe and what I was present
6 for.

7 Q. And if you go to Plaintiff Exhibit 11, Officer
8 Johnson, there's a notebook in front of you --

9 THE COURT: Is that an exhibit that's already been
10 identified and discussed?

11 MR. WASHINGTON: Yes, sir. Yes, sir.

12 THE COURT: Well, we were not going to discuss it
13 again.

14 MR. WASHINGTON: I have not discussed this
15 particular exhibit.

16 THE COURT: You have discussed that exhibit. Isn't
17 that the one that shows some blood?

18 MR. WASHINGTON: Yes, but that's not the exhibit I'm
19 discussing.

20 THE COURT: Let me see which one you're discussing,
21 Mr. Washington. We seem to be going in circles.

22 MR. WASHINGTON: No, sir. This one right here with
23 the --

24 THE COURT: Ask him what you want to ask him about
25 Exhibit 11 and let's move on.

1 Q (BY MR. WASHINGTON) On Plaintiff Exhibit 11, underneath
2 Mr. Darden's eye, do you see that there is a bruise with blood
3 coming out?

4 A. Well, first, I can't tell whose face this is. It's
5 just a picture of an eye and a cheek, so I don't know who this
6 actually is in this picture.

7 Q. But on this picture, do you observe blood and a cut
8 underneath --

9 THE COURT: Mr. Washington, that exhibit is in
10 evidence and the jury will have all the exhibits in the jury
11 room with them.

12 Q (BY MR. WASHINGTON) You had an opportunity to do a
13 search of the house?

14 A. Did I personally, no.

15 Q. You were aware that a search of the house was
16 conducted?

17 A. Yes.

18 Q. And during that sweep or search of the house, was any
19 weapons recovered?

20 A. I don't know. I didn't search the house. I'm not
21 sure what the result of the search was.

22 Q. Did Mr. Darden ever hit you?

23 A. No.

24 Q. Did you observe Mr. Darden punch anyone else?

25 A. No.

1 Q. Would it be reasonable to kick someone in the face?

2 A. Sure, I can think of reasons that -- to kick someone
3 in the face. Is there a certain context to this?

4 Q. In this context, would it be reasonable to kick
5 Mr. Darden in the head and in the face -- I mean, sorry, and
6 underneath his eye? Would that be reasonable?

7 A. I'm not sure I understand the question.

8 THE COURT: He wants to know if it would be
9 reasonable, considering what you've seen on the -- saw at the
10 time and what you've seen on the video, for one of the
11 officers to kick Mr. Darden in the face.

12 THE WITNESS: To have kicked him in the face during
13 this event, the way it unfolded specifically, or just in
14 general?

15 Q (BY MR. WASHINGTON) In general, would it have
16 been -- did you observe something that would have justified
17 them kicking Mr. Darden in the head and underneath the eye?

18 A. Not that I personally observed, no.

19 MR. WASHINGTON: Your Honor, I'll pass the witness.

20 THE COURT: Okay. Do you have any more questions of
21 this witness?

22 Okay. Can he be excused as a witness?

23 MR. EAST: Just a second, Your Honor. I thought
24 Mr. Thomas was jumping in front of me, Your Honor. He was
25 just --

1 THE COURT: Do you want to excuse him as a witness
2 or not?

3 MR. EAST: I don't -- I have one question, Your
4 Honor.

5 **REDIRECT EXAMINATION**

6 **BY MR. EAST:**

7 Q. When you went to this house, were you looking for
8 evidence of lookouts or other things to confirm what was in
9 the warrant?

10 A. No.

11 Q. Your job was to do what?

12 A. Execute the warrant as safely as possible.

13 MR. EAST: Pass the witness.

14 **RECROSS-EXAMINATION**

15 **BY MR. THOMAS:**

16 Q. Officer Johnson, from viewing the video, it appears
17 that you were in the room with Mr. Darden from the time
18 Officer Romero entered the room from the outside perimeter
19 until Mr. Darden was in handcuffs; is that -- would that be
20 accurate?

21 A. I believe so.

22 Q. And during that time, did you see Officer Romero kick
23 Mr. Darden?

24 A. No.

25 MR. THOMAS: Thank you.

1 THE COURT: Okay. Can he be excused as a witness?

2 MR. EAST: Yes, Your Honor.

3 MR. THOMAS: Yes, Your Honor.

4 THE COURT: Okay. You're excused as a witness.

5 It's time to go to lunch. Why don't we take a lunch
6 break until 1:50. Y'all are excused for lunch.

7 COURT SECURITY OFFICER: All rise.

8 (Jury not present)

9 (Recess for lunch)

10 COURT SECURITY OFFICER: All rise.

11 (Jury present)

12 COURT SECURITY OFFICER: Please be seated.

13 (Pause in Proceedings)

14 COURT SECURITY OFFICER: All rise.

15 (Judge enters)

16 COURT SECURITY OFFICER: Please be seated.

17 THE COURT: Okay. Mr. East, you may proceed.

18 MR. EAST: We'll call Officer Brad Danford, please.

19 THE COURT: Okay.

20 MR. EAST: May we approach about releasing some
21 witnesses?

22 THE COURT: Yes, you can.

23 (Bench conference on the record, out of the hearing
24 of the jury, as follows:)

25 MR. EAST: I don't intend to call --

1 THE COURT: Go ahead.

2 MR. EAST: I don't intend to call five of these
3 potential officer witnesses.

4 Is it okay if we release them?

5 THE COURT: As far as I'm concerned, you can.

6 MR. WASHINGTON: No objection from the plaintiffs.

7 THE COURT: Who are they that you're not calling, so
8 I'll make a note on your list. Let me just see your list.
9 You don't need to call them off.

10 MR. EAST: If you can read it, it's Kaether,
11 Sandoval --

12 THE COURT: Hmm, I don't see him. Oh, here he is.
13 Chavez.

14 MR. EAST: Yes, sir, with the top -- Ricks and then
15 Tabor or it might be Tabor Ricks, I'm not sure.

16 THE COURT: J.R. Ricks?

17 MR. EAST: Is one, and then a female Officer Ricks,
18 or she was named Tabor at the time.

19 THE COURT: She's also named Tabor Ricks, but --

20 MR. EAST: There we go. That is it.

21 THE COURT: Good night. You still got -- of course,
22 a lot of those are the plaintiff's witnesses. You're not
23 planning to call any of those, are you?

24 MR. EAST: I don't believe so, Your Honor, no.

25 THE COURT: You sure got a lot of witnesses left.

1 Move on.

2 MR. EAST: We will move extremely quickly, Your
3 Honor. Thank you.

4 THE COURT: Let's don't repeat anything that's
5 already been done.

6 MR. EAST: And there are two more that are probable
7 notes, but it depends on how everything else goes.

8 THE COURT: Okay.

9 *(In the hearing of the jury, as follows:)*

10 MR. EAST: Your Honor, Officer Danford is not back
11 from lunch yet, so we will -- we'll call Officer Seabourn,
12 Justin Seabourn.

13 THE COURT: You're calling Officer Seabourn?

14 MR. EAST: Yes, Your Honor.

15 MR. THOMAS: Yes, Your Honor.

16 THE COURT: He's the records custodian?

17 MR. EAST: Yes, Your Honor.

18 THE COURT: Okay. Okay. You may proceed.

19 MR. EAST: Thank you, Your Honor.

20 JUSTIN SEABOURN,

21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. EAST:

24 Q. State your name, please, sir.

25 A. Justin Seabourn.

1 Q. And how are you employed?

2 A. I'm a Sergeant with the Fort Worth Police Department.

3 Q. And what are your duties?

4 A. I'm the custodian of records.

5 Q. You were called a little bit out of the anticipated
6 order so I'm getting organized, I apologize. What does that
7 mean?

8 A. Among other things, we appear in court settings to
9 verify that documents are official Fort Worth Police
10 Department records.

11 Q. And have you been asked to look at a number of
12 documents in preparation for your testimony here today?

13 A. Yes, sir.

14 Q. And were those documents records of the Fort Worth
15 Police Department?

16 A. Yes, sir.

17 Q. Were they -- let me identify them first, if I may.

18 MR. EAST: All right. May I approach, Your Honor?

19 THE COURT: Yes.

20 Q (BY MR. EAST) Sergeant, I've handed you Exhibits Numbers
21 94, 112, 114, 119, and 120. Do you see those?

22 MR. KITA: Your Honor, may we approach briefly?

23 THE COURT: Pardon?

24 MR. KITA: Before Mr. East reads the titles of the
25 exhibits to the witness in front of the jury, I wanted to know

1 if we could approach briefly?

2 THE COURT: I'm not sure what -- are you making an
3 objection?

4 MR. EAST: If you know what they are, I think I can
5 request ask without identifying them to --

6 THE COURT: Y'all don't talk to each other. Talk to
7 me, if you're going to talk to anybody, and don't just talk.
8 If you have an objection, make an objection.

9 MR. KITA: I will have objections to the
10 admissibility of the exhibits he just referenced. I thought
11 it would be better to take care of it now than --

12 THE COURT: Okay. He hasn't offered the exhibits
13 yet. It's premature to make an objection.

14 MR. KITA: Thank you, Your Honor.

15 Q (BY MR. EAST) Do you recognize those items, sir?

16 A. Yes, sir.

17 Q. And are they all records, reports, data compilations,
18 or memoranda that are maintained by the Fort Worth Police
19 Department?

20 A. Yes, sir.

21 Q. Do they reflect acts, events, conditions, opinions
22 that occurred at or near the time that they were made or
23 transmitted?

24 A. Yes, sir.

25 Q. And is it the normal practice of the Fort Worth

1 Police Department to maintain such records?

2 A. Yes, sir.

3 Q. And were they prepared and submitted by a person with
4 knowledge to do so?

5 A. Yes, sir.

6 Q. And is it the regular --

7 MR. EAST: With that, Your Honor, I'll offer
8 Exhibits 94, 112, 114, 119, and 120.

9 THE COURT: They are received.

10 MR. KITA: Your Honor, I object. May we approach?

11 THE COURT: You're objecting on what ground?

12 MR. KITA: That's what I would like to approach
13 about.

14 THE COURT: The what?

15 MR. KITA: I would like to approach to voice my
16 objection at the bench.

17 THE COURT: Well, if you have a legal ground for an
18 objection, tell me what it is, so I can rule on it.

19 MR. KITA: Okay. I object that they are hearsay,
20 that they are more prejudicial than probative, that they
21 are --

22 THE COURT: They are what?

23 MR. KITA: More prejudicial than probative, and that
24 they are inadmissible under 404(b).

25 THE COURT: Well, let me see the exhibits. Hand

1 them to me and let me -- can you reach over?

2 *THE WITNESS:* Yes, sir.

3 *MR. EAST:* And to remind the Court, if I may, Your
4 Honor?

5 *MR. KITA:* If I hadn't said it yet, Judge, on
6 relevance grounds also.

7 *THE COURT:* Okay. Let me have the attorneys come up
8 here just a minute.

9 *MR. EAST:* Sure.

10 *(Bench conference on the record, out of the hearing*
11 *of the jury, as follows:)*

12 *THE COURT:* Only one. Tell your partner to go back.

13 *MR. EAST:* These are objections that were already
14 overruled subject to authentication.

15 *THE COURT:* Do what?

16 *MR. EAST:* You had overruled his objections already,
17 subject to authentication, and that's all that was left.

18 *THE COURT:* Okay. Well, he's authenticated them.
19 What's the problem now?

20 *MR. KITA:* The problem, Your Honor, is since we've
21 been here, the jury has been instructed, and it's now the
22 position of the Court, that the information that was in the
23 search warrant, or the reason that the officers went to the
24 house, they are not to consider the truth of those statements.
25 They are just wanting to know why a narcotics unit was --

1 THE COURT: Okay. Well, what's your objection?

2 MR. KITA: The objection is that these are not --

3 THE REPORTER: I need you in the microphone.

4 MR. KITA: They are not judgments. They are not
5 documents reflecting a felony conviction. They are documents
6 that show other wrongs, crimes, or acts that are irrelevant to
7 the issues that are before the Court. So, as a result, they
8 are inadmissible under 403, 404(b), and 401 because they are
9 simply not relevant here, and, of course, also hearsay.

10 THE COURT: Well, it seems to me like you've spent a
11 lot of time trying to make this jury think your client is a
12 very productive person in society, and this seems to bear
13 on -- these seem to bear on that subject.

14 MR. KITA: And usually you impeach a client's -- or
15 a person's credibility with judgments of conviction, but just
16 with charges of arrests, that's --

17 THE COURT: Well, these tell about times he was in
18 jail. It seems to me like you're trying to convince the jury
19 that he was a very upstanding person and that he was a very
20 productive member of society, and it seems to me like this has
21 some bearing on that.

22 What's your position on it?

23 MR. EAST: Just that, Your Honor, that we are not
24 cross-examining Jermaine Darden, obviously, for those rules to
25 apply. We are countering the damages argument about his --

1 THE COURT: Just what I said?

2 MR. EAST: Exactly right.

3 MR. KITA: And the only --

4 THE COURT: I think they are admissible for that
5 purpose, so I'm going to overrule the objection.

6 MR. KITA: Thank you, Your Honor.

7 (In the hearing of the jury, as follows:)

8 THE COURT: Can you reach them?

9 THE WITNESS: Yes, sir.

10 Q (BY MR. EAST) All right, sir. Those documents have now
11 been admitted. May I ask you a couple of questions about
12 them.

13 With regard to Number 94, without identifying any
14 other source material you may be familiar with, just state
15 what that is.

16 A. I believe it's a mugshot of Jermaine Darden.

17 Q. And with regard to 112, can you state what that is?

18 A. This is an offense -- Fort Worth PD offense report
19 from May 9th of 2006 documenting an arrest of Jermaine Darden.

20 Q. And that is with a -- suspects being whom? I'm
21 sorry, the arrested persons being whom?

22 A. Arrested persons being Donneika Goodacre and Jermaine
23 Darden.

24 Q. And Number 114 is what?

25 A. This is documenting the arrest of Gerald Darden, and

1 this lists Jermaine Darden as a suspect.

2 Q. On -- go back to 112, if you would. What were the
3 offenses involved in that case?

4 A. Donneika Goodacre was arrested on charges of
5 manufacture/delivery of a controlled substance, Penalty Group
6 1, between 4 grams and 200 grams; and Jermaine Darden was
7 arrested on a possession of marijuana charge, less than
8 2 ounces, and the manufacture/delivery of a controlled
9 substance, Penalty Group 1, greater than 4 grams, less than
10 200 grams.

11 Q. Number 114, what are the charges in that case?

12 A. Gerald Darden was arrested for possession of
13 marijuana underneath 2 ounces.

14 Q. And Jermaine Darden was listed as what?

15 A. He's just listed as a suspect.

16 Q. And 120?

17 A. I'm sorry, Exhibit 119 or 120?

18 Q. I'm sorry, 119. Thank you.

19 A. This is an arrest from June 30th of 2008 listing the
20 arrest of Demarcus Porter for forgery of a financial
21 instrument, the arrest of Willie Blaylock on a Class C warrant
22 for speeding, a Class C warrant for failure to maintain
23 financial responsibility, some other unnamed Class C
24 misdemeanor warrants, and then the arrest of Jermaine Darden
25 on a warrant for manufacture/delivery of a controlled

1 substance. It doesn't list the penalty group, but 4 grams to
2 200 grams.

3 Q. And then finally, 120?

4 A. This is a supplement to Report Number 13-47898 made
5 by crime scene Officer Jeanes of the Fort Worth Police
6 Department. It appears to be a supplement to an incident
7 occurring at 3232 Thannisch Avenue.

8 MR. EAST: Then, Your Honor, there are -- there are
9 three other exhibits, Your Honor, that are not Fort Worth
10 records, but now may be a good time to introduce them. They
11 are certified copies of --

12 THE COURT: What do you want, to offer something?

13 MR. EAST: Yes, Your Honor. I would like to offer
14 Exhibit Numbers 123, 124, and 125.

15 THE COURT: Let me see what they are. They are
16 received.

17 MR. EAST: Thank you, Your Honor. Then I'll pass
18 the witness, as long as they are --

19 THE COURT: Do you need this witness to say
20 something about them?

21 MR. EAST: If I could, briefly, just to identify.

22 THE COURT: Well, apparently he was -- he doesn't
23 know anything about these, other than what you've told him.
24 Why don't you read anything you want to read from them.

25 MR. KITA: Your Honor, could I take the witness on

1 voir dire?

2 *THE COURT:* Well, he's not going to talk about
3 these. He's just going to read them. There's no voir dire to
4 question him about because he's not going to testify on those
5 documents.

6 *MR. KITA:* But if they haven't been authenticated
7 and they are hearsay, then how does the jury get to hear about
8 them?

9 *MR. EAST:* They are a certified public record.
10 Sorry, Your Honor.

11 *THE COURT:* Well, he just happens to be on the
12 witness stand when he's offering some exhibits that don't have
13 anything to do with this witness.

14 So if you want to read from those documents, you're
15 welcome to.

16 *MR. EAST:* Thank you.

17 Exhibit Number 123 is a case in the 396th District
18 Court, State versus Jermaine Darden. It includes the charges
19 of possession of controlled substance, 4 to 200 grams, with
20 intent to deliver. It includes Mr. Darden's written plea
21 where he admits guilt to that offense.

22 Number 124 --

23 *THE COURT:* What's the date of those things? That
24 might be something we need to know.

25 *MR. EAST:* The date of that written plea is

1 September 8th, 2006.

2 THE COURT: That's when he pleaded guilty to what
3 offense?

4 MR. EAST: Possession of a controlled substance,
5 4 grams to 200 grams, with intent to deliver with the --

6 THE COURT: Okay. Go ahead to the next one.

7 MR. EAST: And that one was 2006 with a 10-year
8 probation on it.

9 And then Exhibit 124 is in State versus Jermaine
10 Darden, an unadjudicated judgment on plea of guilty involving
11 possession with intent to deliver controlled substance of
12 4 grams or more but less than 200, namely, cocaine. Offense
13 date, May 9th, 2006.

14 THE COURT: That was cocaine?

15 MR. EAST: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. EAST: And then finally in May 14th, 2007, the
18 state filed a petition to proceed to adjudication claiming
19 Mr. Darden had violated probation based on a list of consumed
20 substances. There are listed three cocaine events, five or
21 six marijuana, and another cocaine, and the dates range from
22 September 2006 through April of 2007.

23 THE COURT: Does it say what the effects of those
24 alleged violations were?

25 MR. EAST: It was part of a probation revocation

1 proceeding, Your Honor.

2 MR. KITA: Your Honor, may I make an objection?

3 THE COURT: Well, does it indicate that the -- that
4 there was a revocation?

5 MR. EAST: This document does not, Your Honor.

6 THE COURT: Okay. What were you going to tell me?

7 MR. KITA: Objection, this document is hearsay and
8 relevance. It's a petition to plead to adjudication. It has
9 allegations in it but --

10 THE COURT: Well, it seems to me like y'all have
11 been offering evidence of how productive Jermaine Darden was
12 and how beneficial he was to the society, and particularly the
13 members of his family, and these things seem to bear on that
14 subject.

15 MR. KITA: Yes, Your Honor, but this is an
16 allegation by a witness that's not here in court. This is
17 somebody's petition. This is not a conviction showing that
18 he's --

19 THE COURT: Well, these are documents that establish
20 what he just said, apparently.

21 MR. KITA: Well, that's my objection, Your Honor.

22 I don't think it establishes what he said. I think
23 it is evidence of somebody else's allegations, but I don't
24 think that's relevant here, and I think it's very
25 prejudicial.

1 *THE COURT:* Are you taking the position that these
2 don't pertain to the Jermaine Darden that you've been -- whose
3 family members you represent?

4 *MR. KITA:* I am taking the position that this
5 document should not be admitted under the Federal Rules of
6 Evidence.

7 *THE COURT:* No, I'm trying to find out if you're
8 taking the position that this is not the same Jermaine Darden
9 that is related to the family members you represent.

10 *MR. KITA:* No, Your Honor, but I don't believe it
11 should be admitted.

12 *THE COURT:* Okay. Well, I'll overrule the
13 objection. I'm not sure I understand what it is, but I
14 overrule it.

15 *MR. EAST:* And I'll agree that I'm offering it only
16 for potential necessity to discuss those types of damages
17 issues that you referenced.

18 *THE COURT:* Okay.

19 *MR. EAST:* And that's all I have for this witness.
20 I pass the witness, Your Honor.

21 *MR. WASHINGTON:* Your Honor, before we call the next
22 witness, may I approach, please?

23 *THE COURT:* I'm sorry, I allow only one attorney to
24 make objections at a time.

25 *MR. WASHINGTON:* Okay. I'll wait until after this

1 witness is passed then, Your Honor.

2 THE COURT: Okay. Call your next witness.

3 Are you through with this witness, Mr. -- are you
4 through?

5 MR. EAST: Yes.

6 THE COURT: Okay. You can step down.

7 MR. KITA: Your Honor, do I have an opportunity to
8 ask questions?

9 THE COURT: You want to ask him some questions,
10 that's fine.

11 MR. EAST: Just so I don't lose these originals, may
12 I place them with the others?

13 THE COURT: Well, they are already received in
14 evidence. Are you --

15 MR. EAST: I was trying to keep them --

16 THE COURT: Are you stacking the evidence
17 someplace?

18 MR. EAST: I think we were trying to keep all the
19 originals in the same place.

20 THE COURT: Well, put them over here, whatever
21 you're doing with the originals.

22 Okay. Mr. Kita, do you have a question you want to
23 ask the witness?

24 MR. KITA: Yes, Your Honor. Thank you.

25 THE COURT: Okay. Go ahead and do that now.

CROSS-EXAMINATION

BY MR. KITA:

Q. Sir, could you turn to Exhibit 94, please.

A. Yes.

Q. This document, I believe you stated, was a mugshot?

THE COURT: You said a Joint Exhibit Number 4?

MR. KITA: I said 94, Your Honor.

THE COURT: 94, I'm sorry.

MR. KITA: I can make this very fast. Let me ask a different question, if that's okay.

Q (BY MR. KITA) Will you agree with me that all of the documents that you were just shown, which are Trial Exhibits 94, 112, 114, 119, and 126 (sic) involve activities that happened in approximately 2006?

A. No, sir.

Q. If I'm missing one, please let me know.

A. Which exhibits did you reference? I'm sorry.

Q. 94, 112, 114, 119, and 126 (sic).

THE COURT: You can just call off the dates as you look at the document.

THE WITNESS: I'm sorry, I don't have Exhibit 126.

THE COURT: Well, do the others, and then we'll worry about 126.

Q (BY MR. KITA) I'm sorry, it was sloppy handwriting. It was 120 was the last one. It just looked like a 6.

1 A. My answer would be no.

2 Q. Okay. Which one am I incorrect about?

3 A. Exhibit 120.

4 Q. 120. I'll get back to that in just a moment, but
5 would you agree with me that documents 94, 112, 114, 119, and
6 120 are not judgments of conviction, correct?

7 A. Correct.

8 Q. These are documents that contain allegations?

9 A. Yes, sir.

10 Q. Okay. And you -- how long have you been the records
11 custodian for the Fort Worth Police Department?

12 A. A little over 4 years.

13 Q. So you've seen judgments of conviction before?

14 A. Yes.

15 Q. You've testified in the past to proving up a
16 conviction document?

17 A. No, sir. We don't hold conviction documents.

18 Q. Okay. Long story short is you have the personal
19 knowledge to say that this is not a judgment of conviction,
20 correct?

21 A. Yes.

22 MR. KITA: Your Honor, could I have one moment to
23 speak to my cocounsel?

24 THE COURT: Yes, you can speak to your cocounsel.

25 MR. KITA: Thank you.

1 *(Conferring)*

2 MR. KITA: Your Honor, I have no more questions for
3 this witness. Thank you very much.

4 THE COURT: Okay. Do y'all have any more questions
5 of this witness?

6 MR. EAST: In response to that, if I may, Your
7 Honor, if I could ask him a question about the county records,
8 if I can show he has the ability to so testify?

9 THE COURT: If you have another question, ask it.

10 **REDIRECT EXAMINATION**

11 **BY MR. EAST:**

12 Q. Do you have Number 123 in front of you, sir?

13 MR. KITA: Your Honor, you already established that
14 he's not allowed to testify about these documents.

15 MR. EAST: Unless I can establish his ability to do
16 so. I'll ask him qualifying questions first, Your Honor.

17 THE COURT: What are you asking him about now, the
18 documents that he didn't identify?

19 MR. EAST: These are the certified records that were
20 admitted.

21 THE COURT: Why don't you just get them and tell the
22 jury what the dates are on them. Let's don't waste a lot of
23 time going through the witness.

24 MR. EAST: I think we've already done that, Your
25 Honor. That's okay. I'll pass the witness. No further

1 questions.

2 THE COURT: Okay. Can he be excused?

3 MR. EAST: Yes, Your Honor.

4 THE COURT: Okay. You're excused as a witness.

5 Thank you.

6 MR. EAST: Thank you, sir.

7 THE COURT: Call your next witness.

8 MR. EAST: We're going to try to call Brad Danford
9 again, Your Honor.

10 MR. WASHINGTON: Your Honor, you said I could ask to
11 approach. Would this be appropriate for me to approach now
12 before this witness?

13 THE COURT: You can approach.

14 MR. WASHINGTON: Thank you.

15 THE COURT: Do the defendants' lawyers want to hear
16 what he's got to say?

17 MR. EAST: Absolutely.

18 *(Bench conference on the record, out of the hearing*
19 *of the jury, as follows:)*

20 THE COURT: Okay. What have you got to say?

21 MR. WASHINGTON: Your Honor, I just wanted to make a
22 brief comment. Just a second ago, there was a comment that
23 was made in the presence of the jury about what the plaintiff
24 has been alleging about Mr. Darden the entire trial.

25 THE COURT: That's the way I interpreted what you

1 were doing.

2 MR. WASHINGTON: I understand, but I'm saying that
3 comment in the presence of the jury, Your Honor, leaves a
4 negative impression.

5 THE COURT: Well, they heard what you've done all
6 along. I didn't add anything to what they have already heard.
7 Is that all you wanted to do?

8 MR. WASHINGTON: Yes.

9 THE COURT: Okay. Y'all can be seated.

10 *(In the hearing of the jury, as follows:)*

11 THE COURT: Okay. You can proceed, Mr. East.

12 MR. EAST: Thank you, Your Honor.

13 THE COURT: Who is this witness?

14 MR. EAST: Officer Brad Danford.

15 Do you guys have the -- Matt, do you guys have the
16 notebook of the original exhibits? Is that that black one
17 right there?

18 THE COURT: You can be seated.

19 THE WITNESS: Yes, sir.

20 THE COURT: Tell me what your name is. I couldn't
21 tell what he said.

22 THE WITNESS: Nathan Danford.

23 THE COURT: Thank you.

24 **NATHAN DANFORD,**

25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EAST:

Q. Good afternoon, sir. Would you state your name, please.

A. Nathan Danford.

Q. And how are you employed?

A. I am a Fort Worth police officer.

Q. And how are you currently assigned?

A. I'm in the Tactical Investigation Division.

Q. And what did you do before that?

A. Well, I've been in the Tactical Investigation Division since, I guess, 2002.

Q. What all does that division encompass?

A. Well, it has vice. It has narcotics. I'm kind of in the admin position now.

Q. And did you ever serve in any other positions?

A. In narcotics?

Q. Yes, sir.

A. Narcotics?

Q. Yes.

A. Yes.

Q. And how long were you there?

A. From 2011 until last year.

Q. Okay. So quite a while?

A. Yes, sir.

1 Q. Were you the narcotics officer or case agent on the
2 investigation of the address 3232 Thannisch in Fort Worth that
3 culminated in a service of a warrant on May 13th, 2016 (sic)?

4 A. Yes, sir.

5 Q. Can you describe -- well, first of all, I'll hand you
6 the exhibit book.

7 MR. EAST: May I approach?

8 THE COURT: Yes. Mr. East, I can't find his name on
9 the exhibit (sic) list. How is he shown on the exhibit list,
10 under what name?

11 MR. EAST: N.B. Danford.

12 THE COURT: Okay. Thank you.

13 MR. EAST: Thank you.

14 Q (BY MR. EAST) In front of you is Exhibit Number 138; is
15 that correct?

16 A. 137?

17 Q. Yes, sir, 137.

18 A. Yes, sir.

19 Q. And do you recognize that document?

20 A. I do. It's my search warrant.

21 Q. And is there a document attached to that document
22 beginning at page 3?

23 A. Yes, sir.

24 Q. And what is that document?

25 A. That's my affidavit in my search warrant.

1 Q. What led you to seek a search warrant for that
2 address?

3 A. Well, at first a CI told me about the address.

4 THE COURT: Say what a CI is.

5 THE WITNESS: A confidential informant.

6 Q (BY MR. EAST) And explain, please, what that is in your
7 line of work.

8 A. That is somebody that helps us with investigations.
9 They will tell us about different places that are selling
10 narcotics, or stealing stuff, or just anything in the criminal
11 activity.

12 Q. Is it your job as a narcotics officer to investigate
13 those matters?

14 A. Yes, sir.

15 Q. When you obtain a warrant, do you go serve the
16 warrant yourself?

17 A. No, sir.

18 Q. So what you deal with is only the investigation part
19 of it?

20 A. Yes, sir.

21 Q. So tell us what led -- what happened next, after you
22 first got contact from a CI to investigate this property?

23 A. Okay. I checked the address in our system and found
24 out it was a location that's had several complaints of
25 narcotics activity.

1 Q. And then what was the first thing you did to
2 investigate this location?

3 A. I assigned the complaint to me.

4 Q. Assigned it to yourself?

5 A. Yes.

6 Q. And what did you do then?

7 A. Then I drove by the location.

8 Q. By yourself?

9 A. No, I had a partner with me.

10 Q. Okay. What I'm trying to get to is what led -- the
11 events that led to the search warrant, ultimately. What did
12 you do after you drove by?

13 A. Well, I was just checking out the house, looking at
14 it, and then I guess a few days later, I met with the CI and
15 we went and made a CI buy.

16 Q. And is this a confidential informant that you were
17 comfortable with or familiar with?

18 A. This was an intel officer's confidential informant.

19 Q. And with a good recommendation from the intel
20 officer?

21 A. Yes, sir.

22 Q. Okay. So if you can look at your affidavit, can you
23 tell us when the first, I guess, buy at that house was made?

24 A. April the 2nd, 2013.

25 THE COURT: What happened on that date?

1 THE WITNESS: On April the 2nd, we made a CI buy.

2 THE COURT: You made a what?

3 THE WITNESS: A confidential informant made a buy
4 for us of narcotics.

5 THE COURT: Bought some drugs?

6 THE WITNESS: Yes, sir.

7 THE COURT: What drugs?

8 THE WITNESS: Cocaine.

9 Q (BY MR. EAST) And explain the amount and why it's that
10 amount.

11 A. We bought \$20 worth of cocaine. I just -- I always
12 try to keep it low. There's no sense of, you know, spending a
13 lot of city money to -- on an investigation.

14 Q. And so, after this first buy when you made a
15 successful purchase, or your CI did, why didn't you run in and
16 start arresting people?

17 A. Well, I wanted to continue the investigation. My CI
18 didn't buy the narcotics from the person that he knew was
19 selling there.

20 Q. What was the suspect description of the first buy?
21 Look at paragraph 5.

22 A. A black female in her fifties, five two, light skin
23 with light brown eyes.

24 Q. Did you later form an opinion of who that may be?

25 A. Yes, sir.

1 Q. Who is that?

2 A. I believed it was the -- Mr. Darden's mother.

3 Q. Donna Randle ring a bell?

4 A. Yes, sir.

5 Q. How about the second buy?

6 A. We made from the same lady.

7 Q. That was in the same time period?

8 A. That was on the 9th of April of 2013.

9 Q. And what did you buy at that time?

10 A. Cocaine.

11 Q. And does anything -- is there any risk to your
12 confidential informant's identity if you were to go in and
13 make an arrest at that time?

14 A. I don't understand the question.

15 Q. Well, if you were to make an arrest based on what the
16 confidential informant told you right there on the spot, who
17 would be a witness?

18 A. Well, the CI buys are used for probable cause for a
19 search warrant. We can't charge them with what they buy,
20 because if they do, it makes the CI be a witness, then they
21 would have to testify, and it could threaten their life later
22 on.

23 Q. Was there a third buy?

24 A. Yes, sir.

25 Q. Describe that, please.

1 A. It was on April the 30th of 2013. We also bought
2 cocaine, but it was from Mr. Darden.

3 Q. And he's described as a -- what's his physical
4 description?

5 A. It says here black male, six foot, 300 pounds,
6 heavyset, gold teeth, early 30s.

7 Q. And were there any more buys?

8 A. Yes, sir, on the 16th day of May, 2013.

9 Q. And describe that one.

10 A. It was also cocaine, and it was also from Mr. Darden.

11 Q. And when you make a buy with a confidential
12 informant, is there a particular process you go through in
13 order to know what's happened?

14 A. Yes. We'll meet with them away from the location in
15 a safe place. We'll search them, make sure they have no
16 property on them, give them our money, and then we take them
17 personally to the place to buy the narcotics.

18 Q. And after they make the buy?

19 A. Then we go to another safe location, search them
20 again, make sure they have nothing else on them.

21 Q. And you're trying to establish what by doing that?

22 A. We're trying to establish -- I mean, that he's being
23 truthful to us. You know, as soon as he comes out of the
24 house, I would always tell them keep the dope in your hand,
25 that way I can see them come and give it to me.

1 Q. And by conducting a number of these buys, you're
2 attempting to get to what end?

3 A. Get the --

4 Q. You're making a number of drug buys so that you can
5 do what, ultimately?

6 A. To write a search warrant for the house.

7 Q. Okay. And did that occur after that buy on May 16th?

8 A. Yes.

9 Q. And do you always do four buys?

10 A. No.

11 Q. Explain that.

12 A. It depends. On this particular one, we didn't make
13 the -- we made the buy from the lady, and we were trying to
14 make a buy from the -- Mr. Darden, except I did not know his
15 name at the time.

16 Q. So what happened after you made that fourth buy --

17 THE COURT: Let me ask a question. Why were you
18 trying to make a buy from Mr. Darden?

19 THE WITNESS: Because he was the subject that the CI
20 said was selling dope there.

21 THE COURT: That the CI said what?

22 THE WITNESS: Was selling the narcotics at that
23 location.

24 THE COURT: Oh, okay.

25 Q (BY MR. EAST) And so on May 16th, did you decide that

1 you had enough probable cause to issue a warrant, a search
2 warrant?

3 A. Well, I had enough probable cause on the first buy we
4 made from Mr. Darden, but it didn't work out, so I had to
5 refresh my probable cause with that buy on the 16th.

6 Q. Do you guys try to get a warrant within a certain
7 time of making the buy?

8 A. Yes, sir.

9 Q. Can you explain that?

10 A. Well, the rule is -- I mean, you don't want to make a
11 buy and then a week later run the -- write a warrant and get
12 it signed and run it. You want to do it pretty close to your
13 last buy.

14 Q. Is it more likely the same suspects will be present
15 if you do it that way?

16 A. Yes, sir.

17 Q. Okay. So on May 16th, 2013, when you decided to seek
18 a warrant, did you contact anybody in any other divisions or
19 your sergeant and ask him to do so?

20 A. Well, the warrant was already written. I just had to
21 add -- I just had to add paragraphs 13, 14, and 15. So I gave
22 the warrant to my sergeant, gave him the details that I had in
23 the investigation, and then his purpose was to find somebody
24 to run the warrant for us.

25 Q. Meaning to serve the warrant once you got it signed

1 by a judge?

2 A. Yes.

3 Q. And did you go to get the warrant signed by a judge?

4 A. Yes, sir.

5 Q. And how did that -- how do you go about doing that?

6 A. I went to the county office -- I mean, the county
7 building, and met a magistrate in the basement.

8 Q. Magistrate is a type of judge?

9 A. Yes, sir.

10 Q. And did you present her -- was it her?

11 A. It was he.

12 Q. Did you present him with your affidavit?

13 A. Yes, sir.

14 Q. And the proposed search warrant?

15 A. Yes, sir.

16 Q. And did he review everything?

17 A. Yes, sir.

18 Q. And signed it?

19 A. Yes, sir.

20 Q. And was it approved as a special type of warrant?

21 A. A no-knock warrant.

22 Q. Okay. Describe what that means.

23 A. That means that the police officers that are serving
24 the search warrant do not have to knock and announce before
25 entry.

1 Q. And was that probable cause for the no-knock aspect
2 based upon paragraph 18?

3 A. Yes, sir.

4 Q. And describe what that says.

5 A. Well, it's a narcotic location, and on some of the
6 buys, there were people outside. On one of the buys, there
7 was somebody caddy-cornered at the house outside. So they
8 could see us approach as --

9 Q. I'm sorry. Had the CI told you anything about that?

10 A. Yeah. He told me that the house caddy-cornered on
11 the next corner, which would be the northeast corner,
12 was -- that it was part of this house.

13 Q. Can you elaborate just a little bit more on that?

14 A. He said that the house on the northeast corner
15 supplied the house that we were going to hit.

16 THE COURT: What do you mean "supplied?"

17 THE WITNESS: Supplied with narcotics is what he
18 told me.

19 MR. WASHINGTON: Your Honor, I object to this line
20 of questioning as being repetitive and not relevant.

21 MR. EAST: I'll move on, Your Honor.

22 THE COURT: I'm going to overrule the objection.

23 Q (BY MR. EAST) So based on that and what -- what your
24 sergeant initiated, a team was put together to serve this
25 warrant?

1 A. Yes, sir.

2 Q. Who was that? Do you know?

3 A. The Central Zero Tolerance Team.

4 Q. And is it the job of a Central Zero Tolerance Team to
5 double-check your homework and redo your investigation?

6 A. Well, they will investigate it, yeah. I mean, they
7 will look at it.

8 Q. Do they rely on what you provide them?

9 A. Yes.

10 Q. Do they rely on what a judge signed?

11 A. Yes.

12 Q. Is it their job to reinvestigate the narcotics
13 aspect?

14 A. No.

15 Q. And so when this team was put together, did you go to
16 any part of the briefing? Do you recall?

17 A. Yes, I made it to the end of the briefing.

18 Q. And by that time, you or somebody from narcotics had
19 supplied the documents we just discussed to that Zero
20 Tolerance Team?

21 A. Yes, sir.

22 Q. Okay. And what happened after the briefing? Did you
23 go to the location?

24 A. Yes, sir.

25 Q. And so if the ZT Team was out there to serve this

1 warrant, what's the purpose of narcotics?

2 A. We've got to do the further investigation inside the
3 house after they make it safe.

4 Q. Does narcotics go in to do the initial entry?

5 A. No, sir.

6 Q. When do you go in?

7 A. We go in after they deem it safe.

8 Q. And then when the ZT Team is in there, are they
9 opening drawers looking for narcotics or are they looking for
10 people?

11 A. They're just looking for people.

12 Q. So your job is to go in there and investigate the
13 narcotics, correct?

14 A. Yes, sir.

15 Q. Did you do that in this case?

16 A. Yes, sir.

17 Q. Let me ask you one question before we get to that.

18 Are you familiar with a person who ran out of the back of this
19 house?

20 A. Yes, sir.

21 Q. Do you know his name off the top of your head?

22 A. Not off the top of my head, no.

23 Q. Describe what happened.

24 A. Well, I pulled up a little later, and I pulled up on
25 the east side of the location, and somebody yelled out

1 somebody was running out the back, and I assisted a couple of
2 officers in taking him into custody.

3 Q. What -- were narcotics found as a result of your
4 team's search?

5 A. Inside the house?

6 Q. Yes, sir. Yes, sir.

7 A. Yes, sir.

8 Q. And what did you find?

9 A. Okay. Would you like for me to name the narcotics
10 found in the house?

11 Q. Yes, please.

12 A. 2.4 grams of cocaine, 1.8 grams of heroin,
13 1.44 ounces of marijuana, another .123 ounces of marijuana,
14 another 2.5 ounces of marijuana, another .105 ounces of
15 marijuana, and a .024 ounces of marijuana, and a .229 ounces
16 of marijuana.

17 Q. And were people in that house charged with offenses
18 related to those items?

19 A. Yes, sir.

20 Q. Do you know who that was?

21 A. Orlando Cook was charged with the heroin, Hunter
22 Rutledge was charged with possession of marijuana, and I
23 believe that's all the narcotics charges.

24 Q. Do you know why nobody was charged with the cocaine?

25 A. Because Mr. Darden, he was deceased.

1 Q. And you believed that to be his?

2 A. Yes.

3 Q. And are you the one who made those decisions about
4 who to charge with what?

5 A. Yes.

6 Q. Okay.

7 MR. EAST: I'll pass the witness.

8 THE COURT: Do you have any questions of this
9 witness?

10 MR. THOMAS: No, Your Honor.

11 THE COURT: Does the plaintiff have any questions of
12 this witness?

13 MR. WASHINGTON: Yes, we do, Your Honor.

14 Your Honor, I hate to do this, but may we please
15 approach?

16 THE COURT: I'm sorry, what did you ask?

17 MR. WASHINGTON: I need to ask you about some
18 exhibits.

19 THE COURT: Okay. You can come up.

20 *(Bench conference on the record, out of the hearing*
21 *of the jury, as follows:)*

22 THE COURT: What do you want to ask me about?

23 MR. WASHINGTON: Your Honor, during the pretrial
24 hearing, there was a conversation that we weren't going to get
25 into the briefing meetings and the briefs that they had to do

1 prior to the no-knock entry.

2 Mr. East asked him about the briefing meetings and
3 what he did with the briefing meeting, and based on this, Your
4 Honor, I'm going to put this exhibit here to this officer, and
5 we're going to move to have this exhibit admitted into
6 evidence.

7 MR. EAST: This was Officer Johnson's. Officer
8 Johnson already testified, Your Honor. He could have asked
9 Officer Johnson about this, if that's what he wanted to do. I
10 asked Officer Johnson if he conducted a briefing.

11 MR. WASHINGTON: You didn't get into the briefing
12 with him like you did with Officer Danford about the briefing
13 that --

14 THE COURT: What do you want to do?

15 MR. WASHINGTON: Your Honor, he used --

16 THE COURT: Do you want to offer this exhibit
17 to -- these two exhibits?

18 MR. WASHINGTON: It's one, Your Honor.

19 THE COURT: You want to ask him if this is a
20 briefing sheet?

21 MR. WASHINGTON: Yes.

22 THE COURT: And that's all you want to ask him?

23 MR. WASHINGTON: Well, there's an issue about guns
24 and stuff. They talk about it being dangerous. In the
25 affidavit, they represented to the magistrate, Your Honor,

1 that there were guns in the house.

2 MR. EAST: Your Honor, what you're holding in your
3 hand is no different than what I'm holding in my hand before I
4 get up and talk. It's the person's notes to themselves about
5 what they are going to tell the team about.

6 THE COURT: This is something witness Johnson
7 prepared?

8 MR. EAST: Yes, and he had the arrest warrant
9 affidavit with him, which he would testify that's why he --

10 THE COURT: Well, this witness may not know anything
11 about it, but you can ask him about it, if you want to. Let's
12 don't spend a lot of time on that.

13 (*In the hearing of the jury, as follows:*)

14 MR. WASHINGTON: Your Honor, may I approach the
15 witness and give him a copy?

16 THE COURT: Yes. See if he knows anything about
17 them.

18 MR. WASHINGTON: Yes, sir.

19 THE COURT: What exhibit numbers are you talking
20 about?

21 MR. WASHINGTON: It's Trial Exhibit 7.

22 THE COURT: What?

23 MR. WASHINGTON: Plaintiff's Trial Exhibit 7.

24 THE COURT: Okay. Do you have a question you want
25 to ask him about those things?

1 MR. WASHINGTON: Sure.

2 **CROSS-EXAMINATION**

3 **BY MR. WASHINGTON:**

4 Q. Officer Danford, I've handed to you what's been
5 identified as Trial Exhibit 7. Are you familiar with that
6 document?

7 A. No, I am not.

8 THE COURT: Okay. Do you have anything else you
9 want to ask?

10 MR. WASHINGTON: I have a follow-up question for him
11 on that, yes.

12 Q (BY MR. WASHINGTON) You have never seen this briefing
13 sheet --

14 THE COURT: I think he said he wasn't familiar with
15 it.

16 MR. WASHINGTON: Your Honor, can I -- I mean, I
17 would like to ask some questions to develop from his
18 deposition --

19 THE COURT: Well, if he doesn't know anything about
20 it, I don't know that you've got anything to gain by asking
21 him about it.

22 MR. WASHINGTON: Well, the issue is, Your Honor,
23 with this question, Officer Danford -- and I can get his
24 deposition. Officer Danford is the individual that was over
25 the briefing. He was the one that reported to the Court in

1 order to get this affidavit.

2 *THE COURT:* I don't think I asked you to tell me all
3 that. Did you want to ask him about this document that he
4 says he doesn't know anything about?

5 *MR. WASHINGTON:* Yes. I want to develop that this
6 witness is familiar with this briefing sheet.

7 *THE COURT:* Are you familiar with that sheet that's
8 marked Exhibit 7?

9 *THE WITNESS:* No, sir, Your Honor, I'm not.

10 *THE COURT:* He's answered the question.

11 *MR. WASHINGTON:* Can I ask him a follow-up question,
12 Your Honor?

13 *THE COURT:* You can do a follow-up question, but
14 don't ask the same thing again.

15 *Q (BY MR. WASHINGTON)* Prior to conducting the no-knock
16 search warrant, is a briefing schedule prepared?

17 *A.* Prior to serving the warrant?

18 *Q.* Yes.

19 *A.* Yes, sir.

20 *Q.* And in this briefing, what do you discuss?

21 *A.* I was not in this briefing. I got there at the end
22 of the briefing.

23 *Q.* I understand. Not that briefing, but in a briefing,
24 what do you discuss?

25 *A.* You discuss everything involved in the investigation.

1 Q. And do you discuss if there are weapons in the house?

2 A. Yes, sir, you do.

3 Q. And do you recall telling me during your deposition
4 that although Lieutenant Verrett represented that there were
5 guns in that house --

6 MR. EAST: Objection, Your Honor. May we approach?
7 May we approach?

8 THE COURT: Yes, you can approach.

9 (Bench conference on the record, out of the hearing
10 of the jury, as follows:)

11 THE COURT: What is it?

12 MR. EAST: The first is --

13 THE REPORTER: I can't understand you.

14 MR. EAST: The first witness I called was Lieutenant
15 Verrett. Mr. Washington, throughout this trial, has asked
16 witnesses about a statement that has never been made by
17 Lieutenant Verrett. He claims that Lieutenant Verrett said
18 there were guns in the house. There's no statement ever that
19 he said that. He never made such a statement.

20 But Mr. Washington would ask witnesses questions,
21 well, if Mr. Verrett said there were guns in the house, he
22 would be wrong, wouldn't he? And I would object. There's no
23 evidence to that. That assumes facts that never happened. So
24 he now wants to put in the jury's mind that Verrett made a
25 statement he never made, and he had every opportunity to ask

1 Verrett about it and didn't.

2 *THE COURT:* Did you just ask about that?

3 *MR. WASHINGTON:* This is his sworn deposition
4 testimony, this officer here. Verrett, in his affidavit and
5 to get the search warrant, Your Honor, there was a
6 representation --

7 *THE COURT:* Has the jury heard those things?

8 *MR. WASHINGTON:* Because Verrett -- and he did -- in
9 Verrett's affidavit --

10 *MR. EAST:* I --

11 *THE REPORTER:* I can only get one of y'all at a
12 time.

13 *THE COURT:* Those things aren't in evidence.

14 *MR. WASHINGTON:* It's the affidavit. It's a search
15 warrant with an affidavit where it talked about being a
16 dangerous place. This is what they had to do in order to get
17 the judge to execute --

18 *MR. EAST:* There is nothing in there about guns,
19 Daryl.

20 *THE COURT:* Let's go back and be honest and do what
21 you're supposed to do.

22 *MR. WASHINGTON:* Sure.

23 *(In the hearing of the jury, as follows:)*

24 *THE COURT:* Let's move on to something else. I
25 think we've exhausted that.

1 Q (BY MR. WASHINGTON) And for the record, are CI's felons?

2 A. Some of them are, yes.

3 Q. This CI that you were using at Mr. Darden's house,
4 was he a felon?

5 A. I do not know. He was not my CI, but I have used him
6 several times.

7 Q. So if you used him several times, were you aware of
8 the individual that you were using in order to get information
9 from, were you aware of their background or his background?

10 A. I was aware that he had been truthful to me every
11 time I've used him.

12 Q. I understand. My question is: Were you aware of his
13 background?

14 A. No, I was not.

15 Q. Is it not important to make a determination, the
16 background of the CI?

17 A. I know the backgrounds of my CIs, yes.

18 Q. You talked about the drugs. What are the value of
19 the drugs that you found or you allegedly found in the house?

20 A. How much money they were worth?

21 Q. Yes, sir.

22 A. Probably, I don't know, 5, \$600.

23 Q. So the total value of what you found in the house was
24 \$500?

25 THE COURT: Isn't that what he just said?

1 Q (BY MR. WASHINGTON) And you indicated --

2 MR. WASHINGTON: Yes, sir.

3 THE COURT: Let's don't repeat what the witness
4 says. Let's move on. We've wasted enough time already.

5 MR. WASHINGTON: I'm trying to go as fast as
6 possible.

7 THE COURT: Well, let's move on.

8 Q (BY MR. WASHINGTON) So you made or your CI made a
9 purchase of \$20 one time or two times from Mr. Darden?

10 A. Two times, yes, sir.

11 Q. After the first time that your CI made that purchase,
12 you could have just arrested Mr. Darden?

13 A. I could not.

14 Q. Did you observe anything that went on in the house?

15 A. Not inside the house, no, sir.

16 Q. So you can't testify as to the injuries that
17 Mr. Darden received?

18 A. No, sir.

19 Q. Have you ever used CIs for high-dollar purchases?

20 A. Like thousands of dollars or --

21 Q. High dollar, more than a thousand. Just high-dollar
22 manufacturing and distribution?

23 A. No, I've gotten a lot of narcotics, but I've usually
24 only made, you know, \$20, \$30, \$40 purchases.

25 Q. I understand about the purchases, but my question is:

1 Do you use CIs for high-dollar purchases?

2 A. Well, some of the houses we don't know exactly what's
3 in there until we get in there.

4 Q. So the goal for you is just to get inside the house?

5 A. If they are selling narcotics, yes.

6 Q. How much money was found in that house?

7 A. I would have to look at the report.

8 Q. You can go ahead and look at the report.

9 A. \$265.

10 Q. And where did you find that money?

11 A. 101 of it was in Mr. Darden's front right pants
12 pocket, and \$164 was in Mr. Cook's front right shorts pocket.

13 Q. Okay. Did you arrest Clifton Crippert -- Crippen?

14 A. Are you talking about Orlando Cook?

15 Q. No, Clifton Crippen, an individual who was at the
16 house, white male?

17 A. No, I did not.

18 Q. You just allowed him just to leave?

19 A. Yes.

20 Q. And you talked about -- well, did you, once you
21 arrived at the house, did you observe any lookouts?

22 A. I did not.

23 Q. That was part of the reasons why you indicated the
24 no-knock warrant was necessary?

25 A. Yes, sir.

1 Q. Did you observe any guns?

2 A. No, sir.

3 Q. You indicated that your CI told you that --

4 THE COURT: We've already developed the rule that
5 you don't ask him what he's already said. Let's move on.

6 Q (BY MR. WASHINGTON) Your CI indicated to you that --

7 THE COURT: We don't go over what we've already gone
8 over.

9 MR. WASHINGTON: I have not gone over.

10 THE COURT: If you have a new question, ask a new
11 question.

12 MR. WASHINGTON: Yes, sir, Your Honor. I haven't
13 gone over this question with him, yes.

14 THE COURT: Okay.

15 Q (BY MR. WASHINGTON) Your CI indicated that Mr. Jordan
16 (sic) was selling dope. Did I hear that right?

17 A. Yes. Mister who?

18 Q. Mr. Darden.

19 A. Yes, sir.

20 THE COURT: Are you telling me that hasn't been
21 developed through this witness yet?

22 MR. WASHINGTON: I have not developed that through
23 this witness.

24 THE COURT: That's been developed through this
25 witness more than once. Let's move on to something new.

1 Q (BY MR. WASHINGTON) Are no-knock warrants, if not
2 executed properly, dangerous for individuals inside of a
3 home?

4 A. I -- I personally don't run them, so I don't know
5 if I could answer that. I mean, anytime is dangerous when
6 you run into a house, for both officers and for people
7 inside.

8 Q. I understand, but my question to you was: If a
9 no-knock warrant is not executed properly, is it dangerous for
10 the individuals inside that home?

11 THE COURT: That's what he just answered. He said
12 it's dangerous for both the officers and the people in the
13 house.

14 MR. WASHINGTON: Your Honor, my question,
15 specifically, was if it was not executed properly. That was
16 the question.

17 THE COURT: That was not your original question.
18 You're changing your question.

19 MR. WASHINGTON: I did not change that.

20 THE COURT: But he's answered your question. Go on
21 to another question.

22 MR. WASHINGTON: Your Honor, I'll pass the witness.

23 THE COURT: Do y'all have any more questions of this
24 witness?

25 MR. THOMAS: I do, Your Honor, briefly.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Officer Danford?

A. Yes, sir.

Q. Is one of the functions of the no-knock warrant and the procedures that took place at 3232 Thannisch or 3030 Thannisch, and investigations as you were running, related in any way to various complaints that may come to you through the community businesses or other persons with knowledge?

MR. WASHINGTON: Your Honor, I'm going to object to that on the basis of hearsay.

THE COURT: I haven't the slightest idea what he said.

MR. THOMAS: He spoke of receiving complaints with regard to this location.

THE COURT: What was your question? Can you speak up, so I can tell what you're saying?

MR. THOMAS: Yes. I'm sorry, Your Honor.

THE COURT: What is your question?

MR. THOMAS: My question is: Is one of the functions of the type of the buys that you were making, and the subsequent warrant that you obtained to deal with or to -- related in any way to complaints that you may have received about that location?

MR. WASHINGTON: Your Honor, I object to that being

1 hearsay.

2 *THE COURT:* I guess I just can't hear well. I
3 haven't the slightest idea what you --

4 *MR. THOMAS:* I'm asking him about complaints he may
5 have received about that location, Your Honor.

6 *THE COURT:* Well, he's told us about a lot of
7 complaints he's received. Now what is it you want to find out
8 about them?

9 *MR. THOMAS:* My question was, was the activity like
10 the activity that he engaged in, in taking a CI or a
11 confidential informant to that location and buying drugs and
12 then having a --

13 *THE COURT:* Are you trying to find out if the series
14 of complaints led to the no-knock warrant?

15 *MR. THOMAS:* If that was a factor in him getting the
16 no-knock --

17 *THE COURT:* Is that your question?

18 *MR. THOMAS:* Yes.

19 *THE COURT:* Answer that question, if you heard what
20 I said.

21 *THE WITNESS:* Okay. The no-knock warrant was done
22 because of people standing outside during our CI buys.

23 *THE COURT:* He's said that before. Why don't we
24 listen to what they say and then we'll know the answer.

25 *MR. THOMAS:* I don't know. Sometimes my ears get

1 stopped up, Your Honor.

2 *THE COURT:* I think he's been called upon twice to
3 say that already.

4 *MR. THOMAS:* I apologize.

5 *THE COURT:* Okay.

6 *MR. THOMAS:* Thank you.

7 *THE COURT:* Okay.

8 *MR. EAST:* One redirect after Mr. Washington's
9 cross?

10 *THE COURT:* Okay, but let's move on.

11 *MR. EAST:* Extremely short.

12 **REDIRECT EXAMINATION**

13 **BY MR. EAST:**

14 *Q.* Did you not arrest Clifton Crippen because of his
15 race?

16 *MR. WASHINGTON:* Your Honor, I'm going to object to
17 that line of questioning. That exceeds the scope of any -- I
18 didn't even get into --

19 *THE COURT:* Let's just don't get into things like
20 that.

21 *MR. EAST:* He asked him, was that guy arrested, and
22 he's the white guy who was not arrested, right? That was his
23 question.

24 *THE COURT:* Okay. Well, that may be a legitimate
25 question. Go ahead.

1 *THE WITNESS:* I did not arrest him because he did
2 not have any warrants and I couldn't link any narcotics to
3 him.

4 *Q* *(BY MR. EAST)* Did you arrest Hunter Rutledge?

5 *A.* I believe -- let's see. Yes, I did.

6 *Q.* What was his race?

7 *A.* He's a white male.

8 *MR. EAST:* Pass the witness.

9 *MR. WASHINGTON:* Your Honor, just a brief follow-up
10 question, please?

11 *THE COURT:* Let's don't follow up on that. We've
12 heard enough of that subject.

13 *MR. WASHINGTON:* Okay, Your Honor. I respectfully
14 would like to ask him a question on Mr. Crippen, very brief.

15 *THE COURT:* Well, ask him a question about
16 Mr. Crippen.

17 **RECROSS-EXAMINATION**

18 **BY MR. WASHINGTON:**

19 *Q.* Based on your experience, would it be proper protocol
20 not to take a witness statement or arrest everybody inside of
21 the house until you are -- until you know exactly what took
22 place in that house?

23 *A.* Everyone is marked where they are at. We write down
24 where they are taken down at, where they came from in the
25 house. We detain everybody, and then we do our investigation

1 inside, and if we can link any kind of narcotics to one of the
2 people by, you know, it being in their wallet somewhere or
3 being underneath where they were laying or where they were
4 sitting -- does that answer your question?

5 MR. WASHINGTON: Not really, but I will take that,
6 that answer, Your Honor. I pass the witness.

7 THE COURT: Okay. Can this witness be excused?

8 MR. EAST: Yes, Your Honor.

9 THE COURT: You're excused as a witness.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Is this your last witness, I hope?

12 MR. EAST: We were going to call our clients, Your
13 Honor.

14 THE COURT: Okay. Well, let's move on.

15 MR. EAST: Yes, Your Honor. Call Officer William
16 Snow.

17 WILLIAM SNOW,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. EAST:

21 Q. Good afternoon, Officer. Can you state your name,
22 please.

23 A. William Snow.

24 Q. And you're employed how?

25 A. Through the City of Fort Worth.

1 Q. And what do you do currently?

2 A. I'm assigned to the Fort Worth Police Department.

3 Q. And what currently?

4 A. I'm assigned to the federal drug task force.

5 Q. So you're a Fort Worth police officer?

6 A. Yes.

7 Q. But your current assignment is what you just said?

8 A. Yes, to the DEA.

9 Q. And what is involved in that assignment currently?

10 A. I deal with mid-to-high-level narcotics trafficking
11 in the area.

12 Q. When did you join the department?

13 A. I joined it in 2004.

14 Q. What had you done prior to that?

15 A. I did patrol, and then I was assigned to --

16 Q. I'm sorry, prior to joining the force.

17 A. Prior to joining, I was in college.

18 Q. Okay. And then, so when you joined the department,
19 what happened? Did you go through an academy?

20 A. Yes, sir, I did.

21 Q. Did you graduate?

22 A. Yes, sir.

23 Q. And then what did you do?

24 A. I did field training, and then I was assigned to a
25 patrol division at that time.

1 Q. And how long were you in patrol?

2 A. I was there six years.

3 Q. What did you do after patrol?

4 A. After patrol, I went to the Zero Tolerance Unit.

5 Q. So that was six years into your employment?

6 A. It was 2010, yes, sir.

7 Q. Okay.

8 MR. EAST: May I approach the witness?

9 THE COURT: Yes.

10 Q (BY MR. EAST) I've handed you two documents marked 108
11 and 144; is that correct?

12 A. Yes, sir.

13 THE COURT: What numbers did you say? I'm sorry.

14 MR. EAST: 108, 108.

15 THE COURT: And 144?

16 MR. EAST: Yes, Your Honor.

17 THE COURT: Okay.

18 Q (BY MR. EAST) What is 108?

19 A. 108 is a Texas Commission on Law Enforcement
20 personnel information form.

21 Q. For whom?

22 A. For myself.

23 Q. Okay. And 144 is what?

24 A. It's a document for a weapons information regarding
25 the taser I was issued.

1 MR. EAST: Move to admit 108 and 144, Your Honor.

2 THE COURT: 108 and 124?

3 MR. EAST: 144.

4 MR. WASHINGTON: Your Honor --

5 THE COURT: I'm sorry, did you say 124?

6 MR. EAST: 144.

7 THE COURT: They are received.

8 MR. WASHINGTON: Your Honor, can I put my objection
9 on this?

10 THE COURT: Oh, if you have an objection, go ahead
11 and make them.

12 MR. WASHINGTON: Yes, sir. Your Honor, on 108, it
13 has to deal with the training, training issues, which is in
14 violation of the Motion in Limine. We were not going to bring
15 up issues that's not relative to the claim.

16 And I have no objections on the -- on 144.

17 THE COURT: On 144, you don't have any objection?

18 MR. WASHINGTON: No, Your Honor.

19 THE COURT: It's admitted, 144 is admitted.

20 Now, let me see 108.

21 MR. EAST: Can you hand that to him, Officer?

22 THE COURT: Could you hand me 108?

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you. What is the legal objection
25 to 108?

1 MR. WASHINGTON: Relevance. It's -- the training
2 has no relevance on the use of force.

3 THE COURT: Are these -- are these a list -- courses
4 listed, different courses you've taken?

5 THE WITNESS: Yes, sir, it is.

6 THE COURT: As a police officer?

7 THE WITNESS: Yes, sir, it is.

8 MR. WASHINGTON: It's also hearsay, Your Honor.

9 THE COURT: I'll admit it. I overrule the objection
10 because it appears to me that it has indications of the
11 training he's had that could have relevance in this case.

12 Go ahead with the next question.

13 MR. EAST: Thank you.

14 THE COURT: I'm receiving both of those exhibits,
15 108 and 144.

16 MR. EAST: Thank you, Your Honor.

17 Q (BY MR. EAST) Is Exhibit Number 108, Officer, a state
18 mandated list of all your training through the date this list
19 was printed out?

20 A. Yes, sir, it was.

21 Q. And you've received training since this was printed
22 out some time ago now?

23 A. Yes.

24 Q. Okay. When you joined the Zero Tolerance Unit, what
25 type of training did you receive from them?

1 A. I received in-house SWAT training on entries.

2 Q. Did you, as a police officer, receive, in addition to
3 that, a variety of defensive tactics --

4 A. Yes, sir, I did.

5 Q. -- type training throughout the -- your entire time
6 as a police officer?

7 A. Yes. Those are mandated every year.

8 Q. On page 3 toward the bottom, in 2011 you took a basic
9 SWAT course?

10 A. Yes, sir, I did.

11 THE COURT: Why don't we let that document speak for
12 itself, and let's ask him something else.

13 Q (BY MR. EAST) This goes on and on, but earlier, opposing
14 counsel had asked or stated to a witness that you had received
15 no training since joining the ZT Team.

16 That's not true, is it?

17 A. No, sir, it's not correct.

18 Q. On the date of May 16th, 20 -- May 13th, 2016 when
19 you found out -- or did I have it right the first time. I'm
20 tired.

21 On the date of this incident, Officer, when you found
22 out that they were putting together a team to serve a warrant
23 at Thannisch Avenue, what was one of the first things you did?

24 A. My job was, at that time, was to do a reconnaissance
25 of the house.

1 Q. And describe what that is.

2 A. It's basically driving by the house to get a location
3 to make sure the warrant matches the description on the house.

4 Q. Were you looking for anything else at the house?

5 A. Looking for any children toys, barricades, or any
6 fortifications made to the outside of the house that would
7 hamper our efforts.

8 Q. Anything that may give you trouble?

9 A. Yes, sir.

10 Q. Okay. After you completed that, did you go back to
11 the briefing room?

12 A. Yes, sir, I did.

13 Q. And by that time, was the warrant signed?

14 A. I believe so.

15 Q. Officer Johnson conducted a briefing?

16 A. Yes, sir.

17 Q. Were you given a suspect description?

18 A. Yes, sir, I was.

19 Q. And what was that?

20 A. It was -- one was a black male, five ten to six foot,
21 300 pounds, and the other one was an elderly black female.

22 Q. So one of the suspects was a large black male. Did
23 you know the nature of the warrant, narcotics or whatever it
24 may be?

25 A. Just as a narcotics warrant.

1 Q. And were you assigned a team responsibility at that
2 point?

3 A. I was assigned to the entry team.

4 Q. Okay. Your team then went to the house, correct?

5 A. Yes, sir.

6 Q. And what did you do when you got there?

7 A. I was the point man up to the front door.

8 Q. And what does that mean?

9 A. I was the lead person up to the front door.

10 Q. Does that mean you're the first one through that
11 door?

12 A. Yes, sir, at the time I was.

13 Q. Did you know what you were going to encounter?

14 A. No.

15 Q. Can you encounter a variety of things?

16 A. There's numerous things you can encounter.

17 Q. And describe what you mean by that.

18 A. You can encounter people on the outside, obstacles in
19 your way trying to get to the door.

20 Q. Could there be potential danger inside?

21 A. Absolutely.

22 Q. Can you describe what that means?

23 A. There's people ready to fight, to run, unknown layout
24 of the house.

25 Q. We've heard descriptions of why you serve a no-knock

1 warrant. Do you agree with those that you've heard?

2 A. I agree.

3 Q. When you entered the house, did you encounter
4 Jermaine Darden?

5 A. Yes, sir, I did.

6 Q. Did you -- we see on the videotape that he flinched
7 like this (indicating). Did you process that as him
8 surrendering?

9 A. Not at that time.

10 Q. Did he -- what did he do immediately after that?

11 A. He put his hands behind the couch.

12 Q. Did you know if there were any weapons on that sofa?

13 A. Not at that time, sir.

14 Q. Have you heard of such incidents where people hide
15 weapons in sofas?

16 A. Yes, sir.

17 Q. And is it the standard practice of your unit, and
18 police that do this type of work, to put everybody on the
19 floor?

20 A. Yes, sir, for safety.

21 MR. WASHINGTON: Your Honor, I object to that as
22 being leading.

23 THE COURT: Overrule the objection.

24 Q (BY MR. EAST) Did you attempt to do that in this case?

25 A. I attempted.

1 Q. Did you tell Jermaine Darden any commands?

2 A. I told him to get down.

3 Q. To get down. Did he follow those commands?

4 A. No, sir, he did not.

5 Q. Did you attempt to physically move him to the floor?

6 A. Yes, sir, I did.

7 Q. Were you successful initially?

8 A. Not initially, no.

9 Q. When you enter that situation, when the door has been
10 rammed open and you're the first man through and you encounter
11 somebody, how much time do you have to think about what you're
12 going to do?

13 A. Split second.

14 Q. Do you have time to review videotapes and see what
15 might be all throughout the house?

16 A. No, sir, you don't.

17 Q. So in that split second, you decided to get Jermaine
18 Darden on the ground. How did you try to accomplish that?

19 A. By pulling the back of his shirt.

20 Q. Was that successful?

21 A. No, sir, it ripped.

22 Q. What did you do next?

23 A. Next I -- after Officer Gray and Brady passed by me,
24 I went up and grabbed Mr. Darden by the hand and attempted to
25 pull him off the couch.

1 Q. And there's some -- how much did you weigh at that
2 time?

3 A. About 165.

4 Q. How much did Mr. Darden weigh?

5 A. 350.

6 Q. So he was basically twice your weight?

7 A. Yes, sir.

8 Q. And all the officers went in other directions to
9 secure other rooms in the house, correct?

10 A. Yes, sir.

11 Q. Did all the other occupants who were told to get
12 down -- I know it wasn't what you were focused on at the time,
13 but have you come to learn that the other occupants obeyed
14 commands and got on the ground?

15 A. Yes, sir, after the fact, yes.

16 Q. So what ended up happening, through no design, you,
17 one of the smaller team members, ended up with the largest
18 person in the house who was --

19 THE COURT: Let's don't, in effect, make an
20 argument. Let's ask questions.

21 Q (BY MR. EAST) You were by yourself with Jermaine Darden;
22 is that true?

23 A. Yes, sir, it is.

24 Q. For a short period of time?

25 A. Yes, sir.

1 Q. Okay. And when you pulled his hand to try to get him
2 on the floor, what happened?

3 A. I was able to get him on the ground for a second.

4 Q. And what happened after that?

5 A. Mr. Darden stood up.

6 Q. Were you trying to hold him down?

7 A. Tried to.

8 Q. Were you successful?

9 A. No.

10 Q. Why not?

11 A. Shear size.

12 Q. Was he strong?

13 A. Yes, sir, he was.

14 Q. Who first came to help you?

15 A. Officer Johnson was the first one to help me.

16 Q. During the entire time you dealt with Mr. Darden, did
17 you throw any strikes?

18 A. No, sir, I did not.

19 Q. Any punches, any kicks?

20 A. No, sir.

21 Q. What is a distractionary strike?

22 A. A distractionary strike is a strike to basically
23 confuse somebody for a second to make them stop what they are
24 doing.

25 Q. If you deliver a strike to one part of their body,

1 maybe they --

2 A. Basically stun them for a second.

3 Q. Would -- throughout the course of this struggle,
4 would it have been appropriate for officers to deliver one or
5 more distractionary strikes?

6 A. Yes, sir, in this course.

7 Q. So going back to Officer Johnson arrives to help you,
8 what do the two of you then do?

9 A. At this time I was on Mr. Darden's back and I was
10 trying to extract his arms from underneath him. At that time
11 Mr. Darden basically did a push-up and sat me up and threw me
12 off his back.

13 Q. What was Officer Johnson doing during that early part
14 of the time?

15 A. He was trying to get his other arm.

16 Q. Even with the two of you, were you successful?

17 A. No, sir.

18 Q. Okay. And part of what you just described, you now
19 know, was there a portion of the videos in the first 20
20 seconds or so that didn't capture any of that?

21 A. Yes, sir.

22 Q. And then after that point in time, between one video
23 or the other, is most of it pretty well captured?

24 A. Yes, sir, it is.

25 Q. During that initial part where you and Officer

1 Johnson were struggling with him, did either one of you use
2 any weapons?

3 A. No, sir.

4 Q. What happened after the two of you were unsuccessful
5 in trying to control him?

6 A. After Mr. Darden pushed me off, I stood back and
7 that's when Officer Johnson said taser.

8 Q. And what did you do?

9 A. Transitioned and pulled out my taser at that time.

10 Q. And what's the hope of using a taser?

11 A. To get compliance out of somebody.

12 Q. Did you say anything or do anything at that point?

13 A. I announced taser, taser, taser.

14 Q. And that is to do what?

15 A. To notify the suspect and other officers that a taser
16 is going to be deployed.

17 Q. And do you recall that we heard some -- we can't play
18 the video again, but we're a good 30, 45 seconds or more into
19 the struggle by this point?

20 A. About that, yes.

21 Q. Is that a prolonged struggle?

22 A. Yes, sir, it is.

23 Q. What happened? Did the taser end the resistance?

24 A. Taser was deployed. It cycled for five seconds, at
25 which time Mr. Darden fell onto the couch. After the five

1 seconds was up, he was back to resisting.

2 Q. And then what did you do next?

3 A. We tried again and then, I believe it was Officer
4 Johnson, said, hit him again, so I announced taser again and
5 deployed the taser.

6 Q. After the time you deployed the taser the first time,
7 on the video, we can hear a variety of comments being made.
8 Did you hear them at the time?

9 A. I heard that he has asthma.

10 Q. You heard somebody yelling he has asthma?

11 A. Yes, sir.

12 Q. And on the video, we can hear people yelling he can't
13 breathe?

14 A. Correct.

15 Q. Do you recall hearing any of that prior to your first
16 taser deployment?

17 A. Not prior to it.

18 Q. Do you recall Donna Randle yelling to Jermaine to
19 stop moving, stop fighting?

20 A. Not on her. I heard other officers to tell him stop
21 moving, stop fighting.

22 Q. You didn't hear Donna say that?

23 A. Not that I'm aware.

24 Q. By the time you've been fighting with somebody for
25 close to a minute, are you hyperfocused on what you're doing?

1 A. Yes, sir.

2 Q. Are you knowing why he's fighting you?

3 A. Not at that point.

4 Q. Can a resisting suspect end in a bad result for an
5 officer or somebody else?

6 A. It can end bad for both parties, yes.

7 Q. Have you had situations where people have fought you
8 before?

9 A. Yes, sir.

10 Q. Have you had to wrestle people into compliance?

11 A. Yes, sir.

12 Q. Have you had to sit on people and hold them down and
13 wrestle their arms behind their back?

14 A. Yes, sir.

15 Q. Have you had to handcuff them after a long struggle?

16 A. Yes, sir.

17 Q. Anybody die as a result of you -- or following you
18 doing anything of that?

19 A. No, sir.

20 Q. In your time as a police officer, have you ever been
21 disciplined?

22 A. No, sir, I have not.

23 Q. After the second taser deployment --

24 MR. WASHINGTON: Your Honor, just for a second, I
25 want to lodge an objection to --

1 THE COURT: Are you making an objection?

2 MR. WASHINGTON: I'm making an --

3 THE COURT: What is the legal objection?

4 MR. WASHINGTON: It's improper character evidence.

5 It goes to assume that if this person is not --

6 THE COURT: I'll overrule your objection.

7 MR. WASHINGTON: Thank you.

8 Q (BY MR. EAST) Following the second taser deployment, did
9 Mr. Darden give up his resistance?

10 A. No, sir. He still continued.

11 Q. What were other officers doing at that time?

12 A. Other officers entered the house and tried to gain
13 control of Mr. Darden's hands.

14 Q. Were you fully aware of what everybody was there --
15 who they were and what they were doing?

16 A. No.

17 Q. Were you aware that at one point Officer Johnson
18 pulled out his own taser?

19 A. Not until after the fact.

20 Q. Not until after the fact. Did you see the patrol
21 officers enter?

22 A. At the very last moment, yes.

23 Q. Was Jermaine Darden resisting until the time he was
24 handcuffed?

25 A. Up to the moment he was handcuffed, yes, sir.

1 Q. When he was rolling over and sort of on his side at
2 one point, do you recall the patrol officers trying to simply
3 pull his hand behind his back?

4 A. Yes, sir.

5 Q. What did Jermaine Darden do?

6 A. He pulled it right back underneath him.

7 Q. And is that a difficult position?

8 A. It's difficult to deal with, yes.

9 Q. Explain what you mean. Explain what you mean by
10 that.

11 A. When he dove his hands underneath him, he's forcing
12 it on him, on top of his weight, and it was harder for
13 officers to grab ahold of it.

14 Q. Were you involved, physically, in that -- in any part
15 of that struggle?

16 A. No, sir, I was not.

17 Q. After you deployed your taser, did you ever lay hands
18 on Mr. Darden again?

19 A. No, sir, I did not.

20 Q. Did you redeploy your taser, recycle it after the two
21 deployments?

22 A. No, sir, I did not.

23 Q. Could you have?

24 A. I could have, yes.

25 Q. You saw the officers struggling with Jermaine Darden,

1 correct?

2 A. Yes, sir. I saw multiple officers with him.

3 Q. And did you consider it an option to redeploy the
4 taser?

5 A. I thought about it, but seeing that there was enough
6 officers there, I figured they can handle it at that time.

7 Q. And by that time, we're a couple of minutes into the
8 struggle or so, and how many officers had arrived?

9 A. Five to six, maybe.

10 Q. And even until the moment he was handcuffed, he never
11 gave up his resistance?

12 A. Correct.

13 Q. Do you know why Jermaine Darden was fighting against
14 you?

15 A. No, sir, I don't. I don't have a reason.

16 Q. If he had been trying to get a weapon, and you
17 stopped trying to control him, no telling what would have
18 happened, correct?

19 A. Yes, sir, correct.

20 Q. Mr. Washington, I predict, will ask you about a
21 deposition you gave where you made a statement about a kick
22 being delivered. Do you recall that?

23 A. Yes, sir, I do.

24 Q. And in your deposition, was it suggested to you that
25 Officer Romero was the officer who made that kick?

1 A. I believed it was Officer Romero at the time.

2 Q. And you agreed with that at the time?

3 A. At the time, yes, sir, I did.

4 Q. So in your deposition, you testified Officer Romero
5 was the officer who kicked him?

6 A. I stated, yeah, I believe it was Officer Romero.

7 Q. Since then, including preparing for this trial, have
8 you formed a different opinion?

9 A. Yes, sir, I did.

10 Q. Based on what?

11 A. Based on the video I've seen.

12 Q. How many officers do you see delivering a kick on the
13 video?

14 A. Just one.

15 Q. And who was that?

16 A. Officer Johnson.

17 Q. Any doubt about that?

18 A. No, sir.

19 Q. I don't think it will become a part of this case, but
20 one of the things the plaintiff is asking for are damages
21 against you, and one of the things that's relevant to that is
22 what your net worth is.

23 Do you own vacation homes?

24 A. No, sir, I do not.

25 Q. Roughly what is your net worth, including your house,

1 your cars, and your pension?

2 A. Anywhere 50 to 100,000.

3 Q. Have you ever done anything other than be a police
4 officer in your adult life?

5 A. No, sir, I have not.

6 MR. EAST: Pass the witness.

7 THE COURT: Do you have any questions of this
8 witness?

9 MR. THOMAS: Briefly, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. THOMAS:**

12 Q. Officer Snow, did you see Officer Romero do anything
13 that was not necessary to try to subdue Mr. Darden?

14 A. No, sir, I didn't.

15 Q. And after reviewing the video, you no longer believe
16 he was the person who you saw kick?

17 A. Correct.

18 MR. THOMAS: Thank you.

19 THE COURT: Does the plaintiff have any questions of
20 this witness?

21 MR. WASHINGTON: Yes, I do, Your Honor.

22 Your Honor, may I approach this witness, please?

23 THE COURT: Pardon?

24 MR. WASHINGTON: May I approach this witness?

25 THE COURT: Approach the -- you want to hand him

1 something?

2 MR. WASHINGTON: Yes, sir.

3 THE COURT: Yes, you can hand him something.

4 MR. WASHINGTON: I'll just put this right here for a
5 second.

6 CROSS-EXAMINATION

7 BY MR. WASHINGTON:

8 Q. Officer Snow, when did you first review the video?

9 A. It was sometime after the incident.

10 Q. In 2013?

11 A. Yes, sir.

12 Q. And how many times would you have reviewed the video
13 in 2013?

14 A. I can't give you a number.

15 Q. More than once?

16 A. More than once.

17 Q. And do you recall reviewing the video in 2014?

18 A. I believe so.

19 Q. You did?

20 A. I believe so.

21 Q. And would you have reviewed the video in 2016?

22 A. Yes, sir.

23 Q. So, is it fair to say that you reviewed
24 the -- between 2013 and 2016, you reviewed the video at least
25 five, six times?

1 A. About that.

2 Q. And do you recall when I took your deposition?

3 A. I remember that day.

4 Q. What year did I take your deposition?

5 A. 2016.

6 Q. I took your deposition in 2016, so you would have
7 already reviewed that video at least six times before I took
8 your deposition?

9 A. Correct.

10 Q. And at your deposition, I asked you, did you observe
11 Officer Romero kick Jermaine Darden in the head, and what did
12 you tell me?

13 A. I said, I believe it was Officer Romero.

14 Q. And at that time you had already reviewed the video?

15 THE COURT: I think you've asked how many times he's
16 reviewed it. Let's move on. And he's told you what he
17 answered, so you don't need to go over that again.

18 Q (BY MR. WASHINGTON) And you are aware that putting an
19 individual on his stomach can cause breathing issues?

20 A. Over a prolonged time, yes.

21 Q. And you did not receive any training on how to deal
22 with obese individuals while making an arrest?

23 A. Correct.

24 Q. You were also aware that Jermaine Darden could not
25 breathe because he told you he could not breathe, correct?

1 A. I believe. I believe so.

2 MR. EAST: I'll object to the question as compound,
3 Your Honor.

4 THE COURT: I'll overrule the objection.

5 MR. EAST: He hasn't -- he asked --

6 THE COURT: I think I'll overrule the objection.

7 MR. EAST: I'm sorry, thank you.

8 Q (BY MR. WASHINGTON) And during your deposition, you
9 admitted that a person placed on their stomach would have a
10 very difficult time breathing?

11 A. Over a prolonged time, yes, sir.

12 Q. And I'm going to ask you the question and give you
13 your answer.

14 So the question was: Sir, are you aware whether a
15 person lying on his stomach has trouble breathing when
16 pressure is applied to the back? Your answer is: I am aware.

17 MR. EAST: Your Honor, this is -- objection,
18 improper impeachment. He's asking a witness about a question
19 that he already gave the answer that counsel wanted.

20 THE COURT: I don't know why you're reading an
21 answer when he's answered in the way you want him to answer
22 from the witness stand.

23 MR. WASHINGTON: I understand. Your Honor, his
24 response was it caused breathing problems.

25 THE COURT: I heard what his response was from the

1 stand, and I heard what you read, and he's already answered
2 your question. Let's don't ask him a question as to whether
3 he said something on a deposition and then read from the
4 deposition after he has answered the question that says the
5 same thing the deposition said.

6 MR. WASHINGTON: It was inconsistencies in the
7 response, Your Honor.

8 THE COURT: Well, he didn't word it exactly the
9 same, but it was the same response. Let's move on.

10 Q (BY MR. WASHINGTON) And isn't it true that you ignored
11 Jermaine Darden's pleas for help?

12 A. No, because we were still taking him into custody at
13 that time.

14 Q. I can't --

15 A. No, sir. We were taking Mr. Darden into custody at
16 that time.

17 MR. WASHINGTON: Your Honor, I request permission to
18 read his response during his deposition.

19 THE COURT: You can read the response in the
20 deposition.

21 Q (BY MR. WASHINGTON) Sir, didn't he tell you that he
22 could not breathe? Your answer: Correct.

23 Despite telling you that he could not breathe, you
24 just ignored -- you basically ignored his pleas? Answer:
25 Correct.

1 Did I read that right?

2 A. Yes, sir.

3 THE COURT: You don't need to ask if you read it
4 right. I'll assume you did, unless Mr. East objects to it.

5 MR. EAST: No.

6 Q (BY MR. WASHINGTON) And did you observe Jermaine Darden
7 hit anyone?

8 A. No, sir.

9 Q. Did you observe when you -- when you first walked
10 into the home, did you observe Jermaine raise both of his
11 hands?

12 A. They were up.

13 Q. And do you recall stating that Jermaine was startled
14 when you walked into the house?

15 A. His face appeared startled, yes.

16 Q. And at any time, did you see Jermaine reach for a
17 weapon?

18 A. I didn't see any weapons at the time.

19 Q. And after Mr. Darden and a number of individuals told
20 you that Mr. Darden could not breathe, you went on to tase him
21 a second time?

22 A. Because he was still actively fighting with us.

23 Q. So you tased him a second time after they told you
24 that he could not breathe?

25 A. Correct.

1 Q. Now, have you ever been in a situation, Officer Snow,
2 where you feel like you are suffocating?

3 A. Yes, sir.

4 Q. During that period of time, would you just --
5 wouldn't it cause you panic, trying to catch your breath,
6 feeling that you're about to die?

7 A. You feel panic, yes.

8 Q. And would you agree with me that there's a difference
9 between panicking because you can't breathe and resisting?

10 A. There's a difference.

11 Q. And would you agree with me, Officer Snow, that
12 kicking an individual in the mouth and in the face would not
13 be reasonable?

14 MR. EAST: Objection, vague, without context,
15 incomplete hypothetical I guess.

16 THE COURT: I'll overrule the objection. He can
17 answer that question.

18 THE WITNESS: Repeat the question.

19 Q (BY MR. WASHINGTON) Would you agree with me that kicking
20 someone in the head and in the mouth would not be reasonable
21 under the circumstances that you've heard here today?

22 A. It couldn't be.

23 Q. It could be?

24 A. It couldn't be. It could not.

25 Q. That wouldn't be reasonable?

1 A. Correct.

2 MR. WASHINGTON: I pass the witness, Your Honor.

3 **RECROSS-EXAMINATION**

4 **BY MR. THOMAS:**

5 Q. Officer Snow, did you see anyone kick Mr. Darden in
6 the head and in the mouth?

7 A. No, sir, I did not.

8 MR. THOMAS: Thank you, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MR. EAST:**

11 Q. Just briefly. You stated that during the struggle
12 you heard Jermaine Darden make the comment "I can't breathe?"

13 A. Correct.

14 Q. You don't know, yourself, do you, what his physical
15 condition was?

16 A. Correct.

17 Q. Do you have any idea if he had an underlying coronary
18 disease?

19 A. No, sir, I did not know.

20 Q. When you say you ignored -- Mr. Washington was asking
21 you about ignoring him, explain what you meant by your, I
22 guess, acquiescence to that word during your deposition.

23 MR. WASHINGTON: Objection, asked and answered.

24 MR. EAST: I'm asking him to explain why he said
25 what he said, not to say it again.

1 THE COURT: Well, you want to ask the question
2 again, so he'll know what you're asking.

3 Q (BY MR. EAST) Explain what you were thinking or meaning
4 by the word "ignored" in that context?

5 A. When I said ignored, I wasn't ignoring Mr. Darden's
6 pleas. I was still trying to focus on getting him into
7 custody.

8 Q. Because you heard him or somebody else say something,
9 did that change the facts of what he was actually physically
10 doing?

11 A. No, it did not change.

12 Q. Mr. Washington asked you about --

13 THE COURT: Let's don't ask what Mr. Washington
14 asked. Let's just ask a question if you have one.

15 MR. EAST: Yes, Your Honor.

16 Q (BY MR. EAST) Were there times when he pulled his hands
17 away?

18 A. There were times, yes.

19 Q. If there had been a weapon that you didn't know
20 about, would that be concerning?

21 A. Absolutely.

22 Q. And when somebody pulls their hands away and you
23 don't know the environment you're in, is that a danger?

24 A. Yes, sir, it is.

25 MR. EAST: I'll pass the witness.

1 THE COURT: Okay. Can he be excused?

2 MR. WASHINGTON: Just brief follow-up, Your Honor.

3 THE COURT: Okay. If you have another question, ask
4 it.

5 MR. WASHINGTON: I beg your pardon, Your Honor?

6 THE COURT: If you have another question, go ahead
7 and ask it.

8 MR. WASHINGTON: Oh, yes, sir.

9 **RECROSS-EXAMINATION**

10 **BY MR. WASHINGTON:**

11 Q. Have you ever been told that cuffing someone's --
12 cuffing a person's hands behind their back and lying someone
13 in the prone position is dangerous?

14 A. Again, for a prolonged time, it is.

15 Q. And do you believe officers should exercise extreme
16 caution when arresting a person who is obese?

17 A. All the time, yes, sir.

18 Q. And would it surprise you to know that your general
19 orders requires you to exercise extreme caution with obese
20 suspects and not to cuff their hands behind their back?

21 MR. EAST: It does not. Your Honor, may we
22 approach? This is a direct violation of the Motion in Limine,
23 Your Honor.

24 THE COURT: Okay. To whatever extent the objection
25 is that that's repetitious, I sustain that objection. We've

1 heard that question asked different ways several times and
2 answered.

3 MR. WASHINGTON: Your Honor, can we approach,
4 please?

5 THE COURT: You can approach.

6 (Bench conference on the record, out of the hearing
7 of the jury, as follows:)

8 MR. EAST: Your Honor --

9 THE REPORTER: I need y'all in the microphone.

10 MR. EAST: Your Honor, this is in direct violation
11 of the Motion in Limine that says plaintiffs cannot bring in
12 any general orders because general orders do not make a
13 constitutional standing, and the general order Mr. Washington
14 is referring to says you can't place people on their stomach
15 after handcuffing them. It doesn't say you can't handcuff
16 somebody fighting you, no matter what size they are. It's
17 a --

18 THE COURT: Well, what is the point? What are
19 you --

20 MR. EAST: He's trying to bring in something that
21 the Court has already excluded, and that's my first objection.
22 It violates the Motion in Limine.

23 THE COURT: Well, what is the question? I'm not --

24 MR. EAST: He's trying to get into a general order
25 that says once you handcuff somebody, you can't place them

1 face down if they are obese, but that general order does not
2 prohibit them from handcuffing somebody. During the
3 handcuffing process, you've got to deal with the struggle.

4 *THE COURT:* What is your question? I'm not sure
5 what --

6 *MR. WASHINGTON:* Because I came up in here, Your
7 Honor, in making a -- Mr. East entered --

8 *THE REPORTER:* I need you in the microphone.

9 *MR. WASHINGTON:* Mr. East admitted the TCOLE records
10 over our objections about training not being relevant to the
11 use of force. Now, Your Honor, and as we have discussed with
12 the Court, it is stated in the Fifth Circuit opinion that the
13 resistance occurs by -- the notice to officers is relevant in
14 analyzing the reasonableness. We look at the totality of the
15 circumstances.

16 *THE COURT:* What is your question? I don't know
17 what we're arguing about.

18 *MR. WASHINGTON:* About asking him the question about
19 the general orders that indicate that you don't put an obese
20 person on their stomach with handcuffs behind their backs.
21 That's a general order, so when you --

22 *THE COURT:* Well, you can ask him that.

23 *MR. EAST:* That's fine, if he asks that question.

24 *(In the hearing of the jury, as follows:)*

25 *MR. WASHINGTON:* May I?

1 THE COURT: You may proceed.

2 MR. WASHINGTON: Thank you, Your Honor.

3 Q (BY MR. WASHINGTON) So, Officer Snow, you know that the
4 Fort Worth Police Department's general orders requires that
5 officers exercise extreme caution with obese suspects and not
6 to cuff their hands behind their backs.

7 MR. EAST: Your Honor, that is not the question he
8 said he was going to ask.

9 THE COURT: You came up here and asked me if you
10 could ask a particular question, and that's not the question
11 you asked me if you could ask.

12 MR. WASHINGTON: Your Honor, that is the exact
13 question.

14 THE COURT: You want to ask the question you asked
15 me if you could ask?

16 MR. WASHINGTON: About the general orders.

17 THE COURT: Do you understand that there's some
18 directive that you don't put a handcuffed heavysset person on
19 his stomach?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Was this man a handicapped -- was
22 this man handcuffed when he went on his stomach?

23 THE WITNESS: He was at that time, yes, sir, but
24 seated up afterwards.

25 THE COURT: After he was put on his stomach is when

1 he was handcuffed?

2 *THE WITNESS:* Yes, sir.

3 *THE COURT:* Okay.

4 *MR. WASHINGTON:* And, Your Honor, and that was the
5 question. What this witness is saying -- and I can ask the
6 questions without stating -- what this witness is saying is
7 that they did not put the handcuffs until he seated him up in
8 the prone position --

9 *MR. EAST:* No, it's not.

10 *THE COURT:* I think he's already given the answer to
11 your question.

12 *MR. WASHINGTON:* That he put the handcuffs on when
13 he was seated or when he was on his stomach?

14 *THE COURT:* He put the -- they put the handcuffs on
15 while he was either on his stomach or on the side.

16 Is that correct?

17 *THE WITNESS:* He was on his stomach, sir.

18 *THE COURT:* So he's answered your question.

19 *MR. WASHINGTON:* That answers it, yes, Your Honor.
20 Yes. Thank you.

21 *THE COURT:* Okay. Can he be excused as a witness?

22 *MR. EAST:* I've got to clean this up, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. EAST:**

25 Q. Officer Snow, is there any prohibition against

1 handcuffing a resisting suspect?

2 A. No, you're supposed to.

3 Q. Does it matter what their size is?

4 A. No, sir.

5 Q. Does it matter what position they have to be in in
6 order to accomplish the task?

7 A. Not as long as it gets done.

8 Q. There's a prohibition against leaving somebody, once
9 they are handcuffed, on their stomach, especially if they are
10 obese, correct?

11 A. Correct.

12 MR. WASHINGTON: Your Honor, I object as leading.

13 THE COURT: Let's don't lead the witness.

14 Q (BY MR. EAST) In this case --

15 THE COURT: Don't lead him. Ask a question.

16 Q (BY MR. EAST) What happened after Mr. Darden was
17 handcuffed?

18 A. He was placed in a seated position.

19 MR. EAST: Thank you. Pass the witness.

20 THE COURT: Okay. Can he be excused as a witness?

21 MR. EAST: Yes, Your Honor.

22 THE COURT: Okay. You can step down.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Okay. Call your -- are you calling your
25 client now, Mr. Thomas?

1 MR. THOMAS: Yes, Your Honor.

2 THE COURT: Okay. Well, let's call him.

3 MR. THOMAS: Call Javier Romero, Your Honor.

4 THE REPORTER: Can you pull that microphone in front
5 of you, please.

6 MR. THOMAS: How's that?

7 THE REPORTER: Thank you.

8 **JAVIER ROMERO,**
9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MR. THOMAS:**

12 Q. Your name, please.

13 A. Javier Romero.

14 Q. And are you an officer in the Fort Worth Police
15 Department?

16 A. Yes, sir.

17 Q. What is your preparatory or your high school
18 education?

19 A. I graduated high school, Amon Carter Riverside in
20 2003.

21 Q. That's here in Fort Worth?

22 A. Yes, sir.

23 Q. After high school, did you attend college or what did
24 you do?

25 A. I enlisted in the Marine Corps.

1 Q. And how long did you serve as a Marine?

2 A. In total, six years.

3 Q. Where did you serve?

4 A. One of my deployments was to Iraq and, like, the last
5 four were as a reservist.

6 Q. So in all, you had how many years of marine service?

7 A. Six years, sir.

8 Q. Have you attended any college courses?

9 A. After I came back from Iraq and I was on reserve
10 status, I was going to TCC while I was working full-time.

11 Q. And you received 30 hours of credit at TCC?

12 A. Yes, sir.

13 Q. And after your college credits or during that time,
14 did you also attend the Fort Worth City Police Academy?

15 A. Yes, sir.

16 Q. And are you currently a certified police officer?

17 A. Yes, sir.

18 Q. Certified in 2007?

19 A. Yes, sir.

20 Q. And have you received numerous certifications from
21 the Texas Commission on Law Enforcement also known as TCOLE?

22 A. Yes, sir.

23 MR. THOMAS: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 Q (BY MR. THOMAS) I hand you what appears to be a Texas

1 Commission on Law Enforcement status report and ask if that
2 appears to be yours and if you're familiar with the credits
3 that are listed on it.

4 *THE COURT:* Does that have an exhibit number?

5 *MR. THOMAS:* Yes. I'm sorry, Your Honor, it's 109.

6 *THE COURT:* Okay.

7 *THE WITNESS:* Yes, sir.

8 *THE COURT:* Are you offering 109?

9 *MR. THOMAS:* I'm offering it, Your Honor.

10 *MR. WASHINGTON:* Your Honor, we're going to object
11 to that document as being not relevant.

12 *THE COURT:* I'll overrule that objection. That
13 exhibit is received.

14 *Q (BY MR. THOMAS)* Does the document that I've handed you
15 marked as 109 contain a record of your educational courses and
16 training through the Texas Commission on Law Enforcement?

17 *A.* Yes, sir.

18 *Q.* Does it appear to be accurate?

19 *A.* It is not up to date, but for the most part, yes, it
20 is accurate.

21 *Q.* Okay. It's probably not completely current. You are
22 still a certified police officer; is that correct?

23 *A.* Yes, sir.

24 *Q.* And how are you currently employed?

25 *A.* I'm part of the SWAT team, the Special Weapons and

1 Tactics Team for the Fort Worth Police Department.

2 Q. You're now a member of the SWAT team?

3 A. Yes, sir.

4 Q. How is that different from the Zero Tolerance?

5 A. We deal with more high-risk threats. We respond to
6 hostage rescue, burglary of persons. We have also more
7 equipment that our regular patrol officers don't have and more
8 training.

9 Q. And how long have you been a member of the SWAT team
10 for the city of Fort Worth?

11 A. Five years and a half.

12 Q. In 2013, were you a member of the Zero Tolerance?

13 A. Yes, sir.

14 Q. And how long had you been a unit -- a member of the
15 Zero Tolerance or ZT Unit?

16 A. Approximately one month, one month at that time, yes.

17 Q. At the time -- that was at the time of the incident
18 that we're here about today; is that correct?

19 A. Yes.

20 Q. So you had been there one month?

21 A. Yes.

22 Q. And I think -- would you agree that one of the
23 objects or purposes of the Zero Tolerance Unit is to serve
24 narcotics search warrants and no-knock search warrants; is
25 that correct?

1 A. Yes, sir.

2 Q. Were you briefed --

3 A. Yes.

4 Q. -- on the situation that you were going to be going
5 into on May 16th --

6 A. Yes.

7 Q. -- of 2013?

8 A. Yes.

9 Q. And how did you determine that the warrant that you
10 were going to serve was proper?

11 A. I never checked the warrant, so I assume the team
12 leader and the corporal had read the warrant.

13 Q. Is it their job to check the warrant?

14 A. Yes, sir.

15 Q. And it's your job to follow their instructions after
16 they determine what is proper; is that correct?

17 A. Yes, sir.

18 Q. When the police van arrived at the Darden residence,
19 where did you take a position or what was your assigned
20 position?

21 A. My assigned position was the Adam side perimeter,
22 which is the --

23 THE REPORTER: Was the what?

24 THE WITNESS: Adam side, A. Adam side, A side, yes.

25 Q (BY MR. THOMAS) Okay. Would that be on the perimeter of

1 the house?

2 A. Yes, sir.

3 Q. And why were you stationed there?

4 A. I mean, I wasn't entry certified at the time, so I
5 couldn't make entry with the rest of the guys on the initial
6 entry. I was assigned there since I was driving the -- I was
7 the driver of the van. It was close to me to get to the front
8 side of the house.

9 Q. Okay. So you were positioned in front of the front
10 door of the house?

11 A. Yes, sir.

12 Q. Could you see into the house?

13 A. Yes, sir.

14 Q. After the door was breached?

15 A. Yes, sir.

16 Q. What did you see that caught your attention in the
17 house, if anything?

18 A. I saw Officer Snow struggling with, now, Mr. Darden.

19 Q. And how long was that struggle, did that struggle go
20 on?

21 A. It seemed forever, but I'm guessing 30 seconds or so.

22 Q. And did you do anything in response to seeing that
23 struggle?

24 A. Yes. So I looked around and looked at one of the
25 narcotics officers, who was in perimeter with me, and he gave

1 me the nod to go inside the house and help Officer Snow, so I
2 went inside the house to help Officer Snow.

3 Q. So there was a narcotics officer out there with you?

4 A. Yes, and two patrol officers.

5 Q. And --

6 A. In the front of the house.

7 Q. And he indicated for you to go ahead and go?

8 A. Yes, sir.

9 Q. And what did you do at that time?

10 A. I got there. I went to -- when I got there,
11 Mr. Darden was on the couch, so I tried to grab his hand. He
12 pulled away. I struck him one time with my closed fist on the
13 left side of his face and then tried to grab his arm again.

14 Q. Why did you strike him?

15 A. To try to distract him so I could have the vantage
16 point to grab his arm and get him caught off guard and get his
17 hands behind his back.

18 Q. Was that pursuant to any police training that you had
19 received?

20 A. Yes, sir.

21 Q. That is, in fact, a tactic that you were taught?

22 A. Yes, sir.

23 Q. And what occurred at that point?

24 A. He went back. I grabbed his arm, he pulled away. At
25 the same time, I heard taser, taser, taser, so I backed off of

1 him and then, of course, the taser was deployed.

2 Q. And why did you back off of him?

3 A. Because I didn't want to be close to the person who
4 is being tased because I could get a current, too.

5 Q. So, in fact, you're trying to get away from the
6 person --

7 A. Yes.

8 Q. -- in a struggle of that nature --

9 A. Yes.

10 Q. -- when a taser is about to be used?

11 A. Yes.

12 Q. After Mr. Darden was tased, how did he react to the
13 first taser?

14 A. He went down for a split second and he -- like, he
15 pushed himself up. I tried to grab his arm again. He still
16 pulled away.

17 Q. Did you once again -- at that point, were you down on
18 your knees?

19 A. Yes, sir.

20 Q. Did you at any time kick Mr. Darden?

21 A. No, sir.

22 Q. Were you really in a position to kick him?

23 A. No, sir.

24 Q. What occurred after you reengaged with Mr. Darden
25 after the first taser?

1 A. We were struggling there. I was focused on the arm
2 that I was trying to grab. I seen other officers were on the
3 other side, and then I hear another taser being deployed, so I
4 back off again, and then tried to engage again to grab his
5 arm.

6 Q. Were you successful?

7 A. No.

8 Q. What was he doing?

9 A. He was putting his arm, like, underneath him, which
10 is really hard. He was really strong. Around the same time,
11 two patrol officers came in and extracted -- his arms were
12 underneath. Somebody did, I don't know who it was,
13 somebody gave me a pair of flex cuffs, plastic handcuffs,
14 which I tried to put on Mr. Darden, but as soon as I pulled
15 the ring, it ripped, so they were not successful.

16 Q. Well, was that before or after the second --

17 A. That was after the second.

18 Q. That was after the second taser?

19 A. Yes.

20 Q. So, now, these handcuffs that you say that you
21 attempted to cuff him with, they were called -- are those
22 called flex cuffs?

23 A. Yes, sir.

24 Q. And basically, are they similar to a plastic tie?

25 A. Yes, in some ways.

1 Q. And were -- had you used those particular handcuffs
2 for a long period of time?

3 A. No, sir.

4 Q. Was that a new product --

5 A. Yes, sir.

6 Q. -- that was being tried by your department?

7 A. Yes, sir.

8 Q. And did they fail?

9 A. Yes, sir.

10 Q. And what did you do then?

11 A. Somebody gave me a pair of regular handcuffs. I put
12 them on one arm. Around the same time, I pulled my own set of
13 handcuffs, put them on the other arm, or wrist, and put them
14 together.

15 Q. Now, why did you use two handcuffs?

16 A. Because he was a big man.

17 Q. So you were actually giving him more room?

18 A. Yes.

19 Q. So he wouldn't have to stretch his arms so far behind
20 his back?

21 A. Yes, sir.

22 Q. And that's something you're trained to do?

23 A. Yes, sir.

24 Q. Now, how many officers do you recall assisting in the
25 subduing of Mr. Darden?

1 A. At some points, there were at least six of us, I
2 believe, inside the room.

3 Q. Now, did you do anything that was different from the
4 training that you received with regard to placing individuals
5 who are resisting in handcuffs?

6 A. No, sir.

7 Q. Had that occurred to you before?

8 A. What?

9 Q. That particular situation where someone was
10 resisting --

11 A. Yes, sir. Yes, sir. Yes, sir.

12 Q. -- handcuffs? Did you have any prior condition -- or
13 did you have any prior knowledge of any medical condition that
14 Mr. Darden might have?

15 A. No, sir.

16 Q. And while you were struggling with Mr. Darden on the
17 floor, did -- or while he was being tased and you were not
18 struggling with him, did you hear anyone state that he had
19 asthma?

20 A. I heard people saying something like that, yes, sir.

21 Q. And what did you do about that?

22 A. Nothing.

23 Q. Why?

24 A. Because I don't know if he has asthma or not. He's
25 still resisting, so my priority is to put him in handcuffs.

1 Q. So your first priority had to be, under the
2 circumstances --

3 A. To secure him, yes.

4 Q. Okay. When you sat Mr. Darden in a seated position
5 up against the couch, did you place your knee against his
6 back --

7 A. I did.

8 Q. -- to prevent him from falling back?

9 A. I did.

10 Q. And how long did you remain like that?

11 A. I couldn't tell. Maybe 30 seconds maybe.

12 Q. And what happened then? Did someone else?

13 A. Yes, Officer Brady came and put his knee behind his
14 back, and I had other duties to do, so I left the location and
15 went outside.

16 Q. So, approximately 30 seconds after he sat up, you
17 left the room; is that correct?

18 A. Yes, sir. Yes, sir.

19 Q. And why did you do that?

20 A. Why did I leave?

21 Q. Why did you leave?

22 A. I had to take the names of all the persons that were
23 inside the house. Being the new guy, that was one of my
24 duties after the execution of the search warrant.

25 Q. So since you were the -- you were the newest person

1 on the team?

2 A. Yes, sir. Yes.

3 Q. And that was a duty that you had been assigned prior?

4 A. Yes. Yes.

5 Q. Prior to the event?

6 A. Yes, sir.

7 Q. And did you do that?

8 A. Yes, sir.

9 Q. And did you have any more engagement with Mr. Darden
10 after that?

11 A. No, sir.

12 Q. Officer Romero, are you being sued in your individual
13 capacity --

14 A. Yes, sir.

15 Q. -- in this suit? Does that mean that you're going to
16 be personally responsible for paying any judgment entered
17 against you in this case?

18 A. Yes, sir.

19 Q. Is that because state law prohibits the City from
20 paying any judgment?

21 A. Yes, sir.

22 MR. WASHINGTON: Your Honor, objection. That's a
23 complete violation of the Motion in Limine that we had
24 addressed on yesterday talking about indemnification by the
25 City of Fort Worth.

1 MR. THOMAS: I don't believe that's correct, Your
2 Honor.

3 MR. EAST: There's an order expressly allowing that.

4 MR. THOMAS: There's an order allowing that.

5 MR. WASHINGTON: That's clearly on insurance --

6 THE COURT: I've authorized them to do exactly what
7 he's doing.

8 Q (BY MR. THOMAS) Do you have an insurance policy that
9 will cover or pay for any judgment taken against you?

10 A. No, sir.

11 Q. What is your approximate net worth?

12 A. It's around \$55,000.

13 Q. Does that include your homestead?

14 A. Yes, sir.

15 MR. THOMAS: Pass the witness, Your Honor.

16 MR. EAST: Nothing for me, Your Honor.

17 THE COURT: Do you have any questions?

18 MR. EAST: No, Your Honor.

19 THE COURT: Do you have any questions of this
20 witness?

21 MR. WASHINGTON: Yes. May I proceed, Your Honor?

22 THE COURT: Yes.

23 **CROSS-EXAMINATION**

24 **BY MR. WASHINGTON:**

25 Q. Officer Romero, do you think the fact that you

1 allegedly only have a net worth of only \$50,000, that for some
2 reason it should be okay for what you did?

3 *THE COURT:* That's a terrible question and you know
4 that's not a proper question.

5 *MR. WASHINGTON:* We're talking about the net worth.

6 *THE COURT:* That's right, and I told them they could
7 prove their net worth, bearing in mind what you were asking in
8 your pleading.

9 *Q (BY MR. WASHINGTON)* And you indicated that you punched
10 Jermaine Darden in the face?

11 *A.* I did.

12 *Q.* Did you punch Jermaine Darden in the face prior to
13 Officer Snow tasing him?

14 *A.* I believe I did.

15 *Q.* And when you punched Jermaine Darden in the face, did
16 he attempt to hit you back?

17 *A.* No, sir.

18 *Q.* Did he attempt to say anything to you?

19 *A.* No, sir.

20 *Q.* Did you observe Jermaine Darden threatening anyone?

21 *A.* No, sir.

22 *Q.* Jermaine was a big obese guy?

23 *A.* He was a big guy, yes.

24 *Q.* Would you agree with me if Jermaine wanted to punch
25 or hit someone, he could have done that?

1 A. Probably.

2 Q. And you are a pretty big guy as well?

3 A. Yes, not as big as him, but yes.

4 Q. But you're strong?

5 A. Yes.

6 Q. You work out?

7 A. Yes.

8 Q. And you would agree with me that at the moment that
9 you held Mr. Darden, when he was in a seated position and when
10 you were holding him with your knee in his back, that for the
11 30-second period, he did not move one single time?

12 A. I don't recall that.

13 Q. You don't recall him moving?

14 A. Yes, or no moving.

15 Q. So would it be fair to say that at that point,
16 Mr. Darden was dead?

17 A. I don't know that.

18 Q. Did you check?

19 A. No, I did not check.

20 Q. Did you talk to anyone in the house about his asthma?

21 A. No, I did not.

22 Q. Are you familiar with the Fort Worth Police
23 Department general order, general orders on dealing with an
24 obese individual?

25 A. The one that was spoken with Officer Snow?

1 Q. Yes. Are you familiar with it?

2 A. Yes, sir.

3 Q. And would you agree that you are not to place
4 handcuffs behind an obese person and put them face down?

5 A. Well, under these circumstances, since he was
6 resisting, I was just trying to get him under control and in
7 custody, the safest to everybody involved.

8 Q. Prior to joining the no-knock unit, did you have any
9 training on handling arrests in that unit?

10 A. What kind of unit?

11 Q. The no-knock, the Zero Tolerance Unit. Did you have
12 any training on how to execute a no-knock warrant?

13 A. No.

14 Q. Did you observe any lookout at that house?

15 A. No. I was focused on the front door, my job.

16 Q. Did anyone tell you they observed lookouts?

17 A. Now, looking back, I have heard that before. I don't
18 know which time I heard it, but in seven years, I have heard
19 that that was one of the reasons of the warrant, yes.

20 Q. Right. But did they tell you that they saw lookouts
21 when y'all got to the residence?

22 A. Oh, no.

23 Q. Did you observe any guns?

24 A. I did not.

25 Q. And do you recall telling me that you are aware that

1 a taser can cause seriously body -- serious bodily injury?

2 A. Yes.

3 Q. And you would agree with that?

4 A. That I told you that?

5 Q. Yes.

6 A. Yes.

7 Q. And do you also recall saying that if someone in the
8 house tells you that a person has asthma, or they can't
9 breathe, that it would not be appropriate to tase them?

10 A. I don't remember that.

11 Q. Let me read the question. So, if you have
12 individuals in the house saying that a person cannot breathe,
13 he has asthma, would that not be a physical condition that you
14 would take into consideration before deploying your taser?

15 Answer: At that time.

16 A. Okay.

17 Q. And would you agree with me, Officer Romero, that
18 Mr. Darden was placed on his stomach for a period of time
19 prior to you putting him in the seated position?

20 A. Are you talking about after handcuffs or --

21 Q. Yes.

22 A. It was about a split second, yes.

23 Q. And on the punching, we -- were you able to -- in
24 your review of the video, were you able to look at this video
25 and look at the moment that you punched Jermaine Darden?

1 A. No.

2 Q. So we cannot see that in the video?

3 A. No.

4 Q. You also indicated that all occupants of a residence
5 should be placed in a prone position until the residence has
6 been secured and determined to be safe.

7 Do you recall that?

8 A. Yes.

9 Q. Did you put Jermaine Darden in the prone position?

10 A. We tried to.

11 Q. Did you put him in it?

12 A. We tried to.

13 Q. Now, what part of Mr. Darden's face did you punch him
14 in?

15 A. It had to be on his left side. I don't remember
16 exactly where, but I punched him with my right side.

17 Q. Did you punch him in the mouth?

18 A. No.

19 Q. Did you come to learn that he was bleeding from the
20 mouth?

21 A. After the fact, I saw pictures, yes, over seven
22 years.

23 Q. So, you know someone hit Mr. Darden in the mouth?

24 A. Probably, yes.

25 Q. And Officer Romero, your acts in punching and kicking

1 Mr. Darden would be separate from the acts of Officer Snow
2 tasing and kneeling Mr. Darden?

3 A. I did not kick Darden.

4 Q. Would your acts be different though, your acts that
5 you performed that day, would they be different, the force
6 that you used, be different from what Officer Snow used?

7 A. I did not kick Darden.

8 Q. I understand. I'm saying your force, would it be
9 different though?

10 A. Yes. My force was with hands and he was with a
11 taser. It was different.

12 Q. Were you given any type of reports of there being
13 guns in the house?

14 A. No.

15 Q. And do you think it would be reasonable to punch and
16 kick someone in the face?

17 A. It depends on when -- it depends on the situation.

18 Q. What situation would be reasonable with the facts --
19 facts similar to this case, where it would be okay to kick
20 someone in the face?

21 A. I don't think it's reasonable to kick somebody in the
22 face in this situation.

23 MR. WASHINGTON: I pass the witness, Your Honor.

24 THE COURT: Do y'all have any more questions of this
25 witness?

1 MR. EAST: Very briefly, very briefly.

2 **CROSS-EXAMINATION**

3 **BY MR. EAST:**

4 Q. Is it your position that it's a violation of any
5 policy to use the taser against somebody who is resisting if
6 somebody yells, he has asthma?

7 A. No.

8 Q. You're not aware of any such policy, are you?

9 A. No.

10 Q. When Mr. Washington keeps asking about handcuffing
11 people, are you familiar with the policy that says whenever a
12 person is handcuffed, the officer shall roll them on their
13 side or place them in a sitting position and caution should be
14 taken in that circumstance if the suspect is obese,
15 intoxicated, et cetera? Are you familiar with that?

16 A. Yes.

17 Q. And are you -- is it your general order policy that
18 after somebody is handcuffed, you should, especially if they
19 are obese, you should seat them up?

20 A. Yes.

21 Q. And that's what happened in this case, correct?

22 A. Yes.

23 MR. EAST: Pass the witness.

24 THE COURT: Okay. Can he be excused as a witness?

25 MR. WASHINGTON: Just very briefly, Your Honor.

1 THE COURT: Pardon?

2 MR. WASHINGTON: I just have a very brief question.

3 THE COURT: Okay. Come back.

4 **RECROSS-EXAMINATION**

5 **BY MR. WASHINGTON:**

6 Q. As an officer, Officer Romero, did you do anything to
7 confirm if Mr. Darden had asthma?

8 A. I did not.

9 MR. WASHINGTON: Pass the witness.

10 THE COURT: Can he be excused as a witness?

11 MR. THOMAS: Yes, he's a defendant though, Your
12 Honor.

13 THE COURT: He's excused. You can step down. Thank
14 you.

15 Do the defendants rest?

16 MR. EAST: Your Honor, may we approach?

17 THE COURT: Pardon?

18 MR. EAST: May we approach? May we approach?

19 THE COURT: Yes, you can come up here.

20 *(Bench conference on the record, out of the hearing*
21 *of the jury, as follows:)*

22 THE COURT: Go ahead.

23 MR. EAST: Two things, and they are related. One is
24 the hour of the day and a break, which ties into my next
25 question. We have a use-of-force expert that we want to take

1 a minute to talk about whether we want to call him or not, and
2 it would be appropriate and permissible if we could take about
3 a --

4 *THE COURT:* I think this jury has heard all they
5 want to hear, but y'all decide that yourselves. We'll take
6 the recess.

7 *MR. EAST:* Thank you.

8 *(In the hearing of the jury, as follows:)*

9 *THE COURT:* It's midafternoon and I promised we
10 would take a recess around midafternoon, so we're going to
11 take a 15-minute recess.

12 *COURT SECURITY OFFICER:* All rise.

13 *(Jury not present)*

14 *(Recess)*

15 *COURT SECURITY OFFICER:* All rise.

16 *(Jury present)*

17 *COURT SECURITY OFFICER:* Please be seated.

18 *(Pause in Proceedings)*

19 *COURT SECURITY OFFICER:* All rise.

20 *(Judge enters)*

21 *COURT SECURITY OFFICER:* Please be seated.

22 *THE COURT:* Why don't the attorneys come up here
23 just a second.

24 *(Bench conference on the record, out of the hearing*
25 *of the jury, as follows:)*

1 THE COURT: What did y'all decide?

2 MR. EAST: We will call no more witnesses, Your
3 Honor.

4 THE COURT: No more? So y'all are resting?

5 MR. EAST: Yes, sir.

6 THE COURT: Okay. Do y'all have any rebuttal?

7 MR. WASHINGTON: No rebuttal, Your Honor.

8 THE COURT: Do you close?

9 MR. WASHINGTON: We close.

10 THE COURT: Do you close?

11 MR. EAST: We close.

12 MR. THOMAS: We close.

13 THE COURT: Okay. I want to give y'all the verdict
14 form as it now exists. The only change between this and the
15 last version, that was attached to an order I last issued with
16 a form attached to it, is I added the -- I added the issue
17 that the Fifth Circuit suggested I add.

18 I had to change a condition. I changed the
19 condition that's ahead of number 5 and added a new question.
20 I called it 6(a), the new question that the Fifth Circuit
21 suggested. I think I've reviewed the exact wording -- no,
22 it's 5(a).

23 MR. EAST: There should be one for each officer.

24 THE COURT: Y'all study it. Read 5 through 6(a) and
25 that will be the areas where there's some change. The only

1 change is I've added a new issue, then I had to change two
2 conditions because I added that new issue. I didn't condition
3 anything on the answer to 6(a), which is the new issue, which
4 I think is what the Fifth Circuit suggested that I not
5 condition anything on that issue.

6 Here's a copy for each of you.

7 MR. EAST: Thank you.

8 Your Honor, for the record, although I don't know
9 that it's required by the rules anymore, we would like to
10 reurge the prior 50(a) motion on the same grounds.

11 THE COURT: And I deny it. I'm not saying it's not
12 a good motion, I'm just not granting it.

13 MR. EAST: I understand, Your Honor.

14 *(In the hearing of the jury, as follows:)*

15 THE COURT: Okay. The evidence is over. Both sides
16 have rested and both sides have closed, and that means they
17 are not going to offer any more evidence, and I'm sure y'all
18 will be disappointed you're not going to get to hear some more
19 witnesses.

20 I am to the point now where I have to give y'all the
21 legal instructions that will guide your deliberations and go
22 over -- your verdict will be answering a series of questions.
23 The number of questions you have to answer will depend on what
24 you've answered to some of the first few, and it may be that
25 you'll only answer two or it may be you'll have to answer

1 30-some-odd. It all depends on your answers.

2 And it's going to take a while for me to read all
3 this. The law contemplates that I'll read the whole thing to
4 you, the instructions on the law, and the verdict form, and
5 the instructions that are in the verdict form.

6 So that's what I'm going to do, and it may take me
7 an hour to do that, and y'all probably will want to go home as
8 soon as I get through doing that and come back tomorrow. And
9 if that's your decision, and I think it would be a wise
10 decision for you to make, that's what you'll do.

11 If you want to continue working and the lady that
12 has to drive, what, an hour and a half?

13 *JUROR:* An hour-and-a-half.

14 *THE COURT:* I'm sure she'll want to go home, and I
15 don't blame her.

16 So, y'all be patient with me while I read this. Let
17 me find what I have to read.

18 *MR. KITA:* Your Honor, can I approach briefly before
19 you begin the reading?

20 *THE COURT:* Pardon?

21 *MR. KITA:* May I approach briefly before you begin
22 the reading?

23 *THE COURT:* You want to approach?

24 *MR. KITA:* Please.

25 *THE COURT:* Yes, you can.

1 MR. KITA: Thank you.

2 (Bench conference on the record, out of the hearing
3 of the jury, as follows:)

4 THE COURT: Yes.

5 MR. KITA: I know -- I'm not trying to be a
6 nuisance, but this is just me doing my job. I wanted to
7 reurge the objections that we filed to the Charge, as given.
8 We paper filed them back in, whatever it was, August and given
9 your ruling, but I feel like I wouldn't do -- I have to reurge
10 it before you read it to the jury.

11 THE COURT: Well, what objections -- you want to
12 make the same objections y'all made in response to my orders?

13 MR. KITA: Yes.

14 THE COURT: I'll consider that you've made all those
15 objections to this verdict form --

16 MR. KITA: Okay.

17 THE COURT: -- that y'all have made in response to
18 my different orders where I attached a verdict form to the
19 order and gave y'all an opportunity to object to it.

20 MR. KITA: Okay.

21 THE COURT: I'll consider that you made all of those
22 objections to this verdict form.

23 MR. EAST: All parties?

24 THE COURT: Both parties.

25 MR. EAST: Yes, Your Honor.

1 *THE COURT:* That way you don't have to make them
2 now.

3 Now, here's the -- here are four copies of the
4 Charge that I'm going to read to the jury. I think it's
5 identical to the one that was attached to the first order I
6 did with a verdict form, which I don't think there was ever
7 any objection to the Court's Charge by either one of you.

8 *MR. KITA:* To the Court's Charge?

9 *MR. EAST:* The introductory part --

10 *MR. KITA:* Oh, sorry, right.

11 *THE COURT:* I don't think there was.

12 The only thing I can think of is I changed one word
13 someplace, and I don't think it was a substantive change, so
14 I'm going to give you all copies of that so you can see ahead
15 of time what that is.

16 *MR. EAST:* Your Honor, for the record, and
17 considering the evidence that was presented --

18 *THE REPORTER:* I need you in the microphone.

19 *MR. EAST:* For the record, and considering the
20 evidence that was presented as to this part, there was one
21 additional pattern instruction that we would request. Here
22 are copies of that.

23 *THE COURT:* What do y'all think of his requested
24 instruction? It looks like it's 2.12 out of something.
25 What's this from?

1 MR. EAST: The Fifth Circuit Pattern Jury
2 Instructions, Your Honor. I have the book with me, if anybody
3 needs it.

4 MR. KITA: I would object that it was conflictive of
5 the other instructions that are already in --

6 THE COURT: I think they are going to make whatever
7 conclusions they are going to make from what they have heard,
8 so I'm not going to give it. I understand you've made that
9 request, and let me keep a copy of it so I'll know what you've
10 done.

11 Okay. Y'all can go back and sit down.

12 MR. KITA: One last thing. So all the stuff we
13 filed, we don't need to restate it now?

14 THE COURT: Do what?

15 MR. KITA: Everything we filed before, it doesn't
16 need to be stated again? It's all overruled? Same ruling?

17 THE COURT: I'm sorry? Do you mean the same
18 objections y'all made in the different responses to my orders?

19 MR. KITA: Yeah.

20 THE COURT: I'm -- if they are being reurged -- I'm
21 treating them as reurged on both sides, and I'm treating --
22 I'm overruling them again.

23 MR. KITA: You didn't say the word "overruled," so I
24 was just --

25 THE COURT: Yeah, I'm overruling them.

1 (In the hearing of the jury, as follows:)

2 THE COURT: Y'all be patient with me. I'm going to
3 read it, and it's a long one.

4 And I need to take my Hall's pill before I start.
5 These are pretty good on your throat if you have to do a lot
6 of reading.

7 Okay. I'm going to start with what we call
8 the -- if I can find it -- what we call the Court's Charge to
9 the jury. That's the initial legal instructions -- did I give
10 y'all all of my Court's Charges? Somebody give me one back.
11 Thank you.

12 MR. KITA: You're welcome.

13 THE COURT: Okay. Members of the Jury:

14 Now that you have heard the evidence and the
15 argument, it becomes my duty to give you the instructions of
16 the Court as to the law applicable to this case.

17 It is your duty as jurors to follow the law as
18 stated in the instructions of the Court and to imply -- to
19 apply the rules of law so given to the evidence in this
20 case.

21 Neither are you concerned with the wisdom of any
22 rule of law stated by the Court. Regardless of any opinion
23 you may have as to what the law ought to be, it would be a
24 violation of your sworn duty to base a verdict upon any other
25 view of the law than those given in the instructions of the

1 Court, just as it would be a violation of your sworn duty as
2 judges of the facts to base a verdict upon anything but the
3 evidence or lack of evidence in the case.

4 Those are the words I added, by the way, "or lack of
5 evidence." I added that twice.

6 Justice through trial by jury must always depend
7 upon the willingness of each individual juror to seek the
8 truth as to the facts from the same evidence presented to all
9 of the jurors and to arrive at a verdict by applying the same
10 rules of law as given in the instructions of the Court.

11 At the outset, I am sure you understand that -- by
12 this time that all parties to this litigation must be treated
13 exactly alike insofar as their rights are concerned. This
14 case should be considered and decided by you as an action
15 between persons of equal standing in the community, of equal
16 worth, and holding the same or similar stations in life.

17 Do not let bias, prejudice, sympathy, resentment, or
18 any such sympathy (sic) play any part in your deliberations,
19 and do not speculate on matters not shown by the evidence.
20 Keep constantly in mind that it would be a violation of your
21 sworn duty to base a verdict on anything but the evidence or
22 lack of evidence in the case. You will carefully and
23 impartially consider all of the evidence in the case, follow
24 the law as stated by the Court, and reach a just verdict,
25 regardless of the consequences.

1 The case is submitted to you on questions in a
2 "Verdict of the Jury" form, and I'll go over those questions
3 with you in a minute after I read this.

4 You will answer all but two of the questions based
5 on a preponderance of the evidence submitted to you under the
6 rulings of the Court, answering the questions by unanimous
7 consent -- every question has to be unanimously agreed
8 upon -- the answer has to be unanimously agreed on as to each
9 of the answers. So you will write -- you will answer the
10 questions by the unanimous consent of the jury through your
11 foreperson, who will write your unanimous answers in the space
12 provided therefor following each question. Each of the
13 questions has a place to put the answer.

14 Two of the questions contained in the verdict form
15 require that you base your answers on clear and convincing
16 evidence. The answers to those questions must be unanimous
17 answers. You will place your answers in the space provided
18 therefor following each of those questions, but you will base
19 your answers on clear and convincing evidence, rather than a
20 preponderance of the evidence as to those questions.

21 Clear and convincing evidence is defined as follows:

22 "Clear and convincing evidence" is evidence that
23 produces in your mind a firm belief or conviction as to the
24 matter in issue. This involved a greater degree of persuasion
25 than is necessary to meet the preponderance of the evidence

1 standard; however, proof to an absolute certainty is not
2 required.

3 It is evidence -- it is necessary for the jury to be
4 advised of and understand certain legal terms which play such
5 a large part in the determination of this sort of litigation.
6 So, at the outset, I will give you some definitions and
7 explanations. Additional definitions and explanations will be
8 provided to you in the verdict form.

9 And when I go over the verdict form, I'll go over
10 those definitions and explanations. Actually, there are very
11 many definitions and explanations in the verdict form.
12 Continuing on with the reading here:

13 Unless otherwise instructed, you will answer the
14 questions in the verdict form with a "yes" or "no." Except as
15 to the two questions that require answers based on clear and
16 convincing evidence, a yes or no answer must be based on a
17 preponderance of the evidence and must be the unanimous answer
18 of the jury.

19 When a question required other than a yes or no
20 answer, appropriate instructions will be supplied, and you
21 will answer in any event -- your answer, in any event, must be
22 based on a preponderance of the evidence and be the unanimous
23 answer of the jury. If the question does not require a yes or
24 no answer, but directs you to make a finding from a
25 preponderance of the evidence, your answer to such a

1 question will be what you find the answer to be based on a
2 preponderance of the evidence and must be the unanimous answer
3 of the jury.

4 By the term "preponderance of the evidence" is meant
5 the greater weight and degree of credible evidence in the
6 case. To establish by a preponderance of the evidence means
7 to prove something is more likely so than not so. In other
8 words, a preponderance of the evidence in the case means such
9 evidence, as when considered and compared with that opposed to
10 it, has more convincing force and produces in your minds
11 belief that what is sought to be proved is more likely than
12 not.

13 It does not necessarily mean the greater volume of
14 evidence or the greater number of witnesses, but it means that
15 when you sift through all the evidence in the case, the
16 evidence that you consider credible or worthy of belief, you
17 take that evidence on each side and the side that has greater
18 weight, or that tips the scale, is the one that preponderates.

19 In determining whether any fact in issue has been
20 proved by a preponderance of the evidence in the case, the
21 jury may, unless otherwise instructed, consider the testimony
22 of all witnesses, regardless of who may have called them, and
23 all exhibits received in evidence, regardless of who may have
24 produced them. So the preponderance of the evidence merely
25 means the greater weight and degree of the credible evidence.

1 By the way, all of the exhibits will go into the
2 jury room, so they will be available for y'all to look at when
3 you start your deliberations.

4 You, as jurors, are the sole judges of the
5 credibility of the witnesses and the weight their testimony
6 deserves.

7 You should carefully scrutinize all the testimony
8 given, the circumstances under which each witness has
9 testified, and every matter in evidence which tends to show
10 whether a witness is worthy of belief. Consider each
11 witness's intelligence, motive, and state of mind, and
12 demeanor and manner while on the witness stand. Consider the
13 witness's ability to observe the matter as to which he or she
14 testified and whether he or she impresses you as having an
15 accurate recollection of those matters.

16 Consider also any relation each witness may have had
17 to either side in the case, and the extent to which, if at
18 all, each witness is either supported or contradicted by other
19 evidence in the case.

20 Inconsistencies or discrepancies in the testimony of
21 a witness, or between the testimony of different witnesses,
22 may or may not cause the jury to discredit such testimony.
23 Two or more persons witnessing an incident or a transaction
24 may see it or hear it differently, and innocent
25 misrecollections, like failure of recollections, is not an

1 uncommon experience. In weighing the effect of a discrepancy,
2 always consider whether it pertains to a matter of importance
3 or an important -- unimportant detail, and whether the
4 discrepancy results from innocent error or intentional
5 falsehood.

6 After making your own judgment, you will give the
7 testimony of each witness such credibility, if any, as you may
8 think it deserves.

9 In the final analysis, it is the responsibility of
10 the jury to make its own independent decision as to the
11 ultimate facts in this case and to reach that opinion based on
12 all of the evidence, regardless of the source from which it
13 came.

14 There are two kinds of evidence that may be
15 introduced as to the facts of a case. One is direct evidence,
16 such as the testimony of an eyewitness. The other is indirect
17 or circumstantial evidence, the proof of a chain of
18 circumstances pointing to the existence or nonexistence of
19 certain facts.

20 A fact is established by circumstantial evidence
21 when the fact sought to be established may be fairly and
22 reasonably inferred from other -- from all other facts and
23 circumstances proved in the case. In order to establish a
24 theory, conclusion, or hypothesis by circumstantial evidence,
25 the proved facts and circumstances must be such to make that

1 theory, conclusion, or hypothesis more probable, not merely
2 possible, than any other theory, conclusion, or hypothesis
3 based on those facts and circumstances.

4 In other words, the fact to be proved is established
5 by an inference from proven circumstances. A fact is
6 established by circumstantial evidence only if its existence
7 is more probable than any other fact that can reasonably be
8 inferred from all of such evidence.

9 As a general rule, the law makes no distinction
10 between direct or circumstantial evidence, but simply requires
11 that the jury find the facts in accordance with the
12 preponderance of all the evidence in the case or clear and
13 convincing evidence, both direct or circumstantial. In other
14 words, the finding of a fact cannot be based on mere surmise
15 or speculation.

16 In making up your mind and reaching a verdict, you
17 may not -- do not make any decision simply because there were
18 more witnesses on one side than the other. Do not reach a
19 conclusion on a particular point because there was just more
20 witnesses testifying for one side on that point. Your job is
21 to think about the testimony of each witness you have heard
22 and decide how much you believe of what each witness had to
23 say.

24 Where there is no dispute concerning certain facts,
25 the attorneys may agree or stipulate as to those facts. A

1 stipulation is something that the attorneys agree is accurate.
2 When there is no dispute about certain facts, the attorneys
3 may agree or stipulate about those facts. You may accept
4 stipulated facts as evidence and treat them as facts -- as
5 having been proved as facts -- as having been proved here in
6 court.

7 Y'all might remember, it's been a long time ago, but
8 I read y'all some stipulated facts before, really, the trial
9 started. That's what that refers to.

10 Now, certain evidence is presented -- been -- well,
11 this is not applicable. I'm going to strike it out. I am
12 going to modify it just a little bit.

13 You've had questions asked of witnesses, didn't you
14 say something on the deposition or not, so I am going to pick
15 back up here.

16 A deposition is the sworn, recorded answers to
17 questions a witness was asked under oath in advance of trial.

18 That explains what all those questions were about,
19 depositions.

20 Under some circumstances, if a witness cannot be
21 present to testify -- well, that's not applicable here. I'm
22 going to leave that sentence out because it's simply not
23 applicable.

24 The next sentence I'm going to leave out, too,
25 because it's not applicable.

1 I'm going to pick back up with the paragraph
2 starting with the words "during the trial."

3 During the trial, you have heard the opinion of at
4 least one person who was presented as an expert. If
5 scientific, technical, or specialized knowledge might assist
6 the jury in understanding the evidence or determining a fact
7 in issue, a witness qualified as an expert by knowledge,
8 skill, experience, training, or education may testify and
9 state an opinion concerning such matters.

10 Merely because an expert witness has expressed an
11 opinion does not mean, however, that you must accept that
12 opinion. The same as is true as with any other witness, it is
13 up to you to decide whether you believe the testimony of an
14 expert and choose to rely on it. Part of that decision will
15 depend on your judgment about whether the witness's background
16 or training and experience is sufficient for the witness to
17 give the expert opinion that you heard. You must also decide
18 whether the witness's opinions were based on sound reasons,
19 judgment, and information.

20 When words are used in the questions in the verdict
21 form in a sense which varies from the meaning commonly
22 understood, you will be given, either in this Charge or in the
23 verdict form, a proper legal definition, which you are bound
24 to accept in place of every other definition or meaning. You
25 will be guided by the instructions contained in the verdict

1 form the same as you are to be guided by the instructions I'm
2 giving you now.

3 You are the exclusive judges of the facts proved,
4 the credibility of the witnesses, and the weight to be given
5 their testimony, but you are bound to receive the law from the
6 Court, as stated herein, and in the verdict form, and be
7 governed accordingly.

8 To reach a verdict, all of you must agree. Your
9 verdict must be unanimous and your -- on each question you
10 answer. Your deliberations will be secret. You will never
11 have to explain your verdict to anyone.

12 It is your duty to consult with one another and to
13 deliberate in an effort to reach agreement, if you can do so.
14 Each of you must decide the case for yourself, but only after
15 an impartial consideration of the evidence with your fellow
16 jurors.

17 During your deliberations, do not hesitate to
18 reexamine your own opinions and change your mind if convinced
19 that you were wrong, but do not give up your honest beliefs as
20 to the weight or effect of the evidence solely because of the
21 opinion of your fellow jurors or for the mere purpose of
22 returning of a verdict.

23 During your deliberations, you must not communicate
24 with or provide any information to anyone by any means about
25 this case. You may not use electronic devices -- any

1 electronic device or media, such as a telephone, a cell phone,
2 smart phone, iPhone, BlackBerry or computer, the internet, or
3 any internet service, any text or instant messaging service,
4 any internet chat room, blog, or website such as Facebook,
5 MySpace, LinkedIn, YouTube, or Twitter, to communicate with
6 anyone about information -- anyone -- to anyone to -- let me
7 back up -- to communicate to anyone any information about this
8 case or to conduct any research about this case until after I
9 accept your verdict.

10 In other words, you cannot talk to anyone by phone,
11 correspond with anyone, or electronically communicate with
12 anyone about this case. You can only discuss this case in the
13 jury room with your fellow jurors during deliberations.

14 You may not use any electronic means to investigate
15 or communicate about this case because it is important that
16 you decide this case based solely on the evidence presented in
17 the courtroom. Information on the internet or available
18 through social media might be wrong, incomplete, or
19 incorrect.

20 You are only permitted to discuss this case with
21 your fellow jurors during deliberations because they have seen
22 and heard the same evidence you have. In our judicial system,
23 it is important that you not be influenced by anything or
24 anyone outside this -- by anyone or anything outside this
25 courtroom. Otherwise, your deliberations may be based on

1 information known only to you and not to your fellow jurors or
2 to the parties in the case. That would unfairly and adversely
3 affect -- impact the judicial process.

4 Now, bearing in mind the foregoing instructions, as
5 well as the further instructions later given to you by me
6 orally or in writing, you will return herein answers to the
7 questions in the verdict form or to such of those -- or
8 to -- as such of them as may be necessary according to the
9 specific explanations in connection with such questions.

10 After you retire to the jury room, you will select
11 your foreperson.

12 It is the duty of your foreperson:

13 One, to preside over your deliberations.

14 Two, to see that your deliberations are conducted in
15 an orderly manner and in accordance with the instructions of
16 this Charge.

17 Three, to write out and hand to the court security
18 officer --

19 By the way, the court security officer will stand
20 right outside your door throughout your deliberations, so if
21 there's a message that you want to send to the Court, it
22 should be written out by your foreperson and handed to the
23 court security officer, and he'll bring it to me. Let me
24 repeat what I just said.

25 To write out and hand to the court security officer

1 any communications concerning the case that you desire to have
2 delivered to me.

3 The fourth thing is to conduct a vote on the
4 questions. That's another function of the foreperson.

5 And the fifth thing is to write your answers to the
6 questions in the spaces provided in the verdict form.

7 And six, to certify to your verdict in the space
8 provided for the foreperson's signature.

9 Now, bear in mind you are never to reveal to any
10 person, not even to the Court, how the jury stands,
11 numerically or otherwise, on any question until after you have
12 reached a verdict.

13 Let me have an attorney for each party come up here
14 just a second.

15 *(Bench conference on the record, out of the hearing*
16 *of the jury, as follows:)*

17 *THE COURT:* Does the plaintiff have any objection to
18 the Court's Charge as I've read and explained it to the jury?

19 *MR. KITA:* Are the stipulated facts supposed to be
20 included in the Charge itself?

21 *THE COURT:* It's just the Court's Charge, that I've
22 already read.

23 *MR. KITA:* Other than the absence of the stipulated
24 facts, no.

25 *THE COURT:* What?

1 MR. KITA: I said, other than the facts that are
2 stipulated, that were read to the jury in the beginning,
3 should probably be given to them in the Charge.

4 THE COURT: I'm asking you if you have any objection
5 to the Court's Charge as I've read and explained it to the
6 jury.

7 MR. KITA: I have an objection that the stipulated
8 facts are not included in it.

9 THE COURT: Okay. I overrule that objection.

10 Does either defendant have any objection to the
11 Court's Charge as I've read and explained it to the jury?

12 MR. EAST: Not to what you just read, no.

13 MR. THOMAS: No, Your Honor.

14 THE COURT: Okay. That's what I was asking.

15 *(In the hearing of the jury, as follows:)*

16 THE COURT: Okay. Now I'm going to read the verdict
17 form of --

18 *(Bench conference on the record, out of the hearing*
19 *of the jury, as follows:)*

20 MR. EAST: Your Honor, Matt, Lee. I think it's a
21 mistake, not an objection, but if I need to make an objection,
22 I will.

23 Questions number 3 and 4, that's a sort of a
24 double-negative. The question should be is no -- that no
25 reasonable officer could have found that the force was

1 reasonable. This says no reasonable officer could have found
2 it was excessive.

3 THE REPORTER: I didn't hear you.

4 MR. EAST: I said it's flipping the qualified
5 immunity question, the questions 3 and 4 are --

6 THE COURT: You're talking about questions 3 and 4?

7 MR. EAST: Yes, Your Honor.

8 MR. KITA: Do you have a Pattern Jury Charge?

9 THE COURT: I think it's correct the way I had it
10 worded.

11 MR. EAST: Your Honor, it's hard to think through it
12 because --

13 THE COURT: Ask him if he agrees with what you've
14 done, and if both of you agree to it --

15 MR. KITA: Do you have a PJC?

16 MR. EAST: I don't know that he got that one from
17 it, but I can find it.

18 MR. KITA: Can you give us two seconds to consult,
19 Judge? Judge --

20 *(Conferring between counsel away from bench)*

21 *(Reapproaching the bench)*

22 THE COURT: Have y'all agreed on that?

23 MR. EAST: Yes, Your Honor. The -- this is the
24 qualified immunity standard.

25 THE COURT: Well, where is the language you're

1 talking about?

2 MR. EAST: Well, if you -- I just lost it. It was
3 right there.

4 THE COURT: Where is it?

5 MR. EAST: I think it's that paragraph with the
6 handwriting on it. Qualified immunity applies if --

7 THE COURT: Could have believed what?

8 MR. EAST: Could have believed that it was lawful,
9 and in yours it says could have believed that it was
10 excessive. That's the -- backwards.

11 MR. KITA: Those are the changes that we agreed to.

12 THE COURT: Okay. If y'all agree to it, I'm going
13 to change 3 to read the way you did it. I'm going to change
14 the "would" to "could." I'm going to change the word
15 "excessive" to "lawful." That's in 3 and 5 or 3 and 4.

16 MR. EAST: 3 and 4.

17 THE COURT: I'm going to take out the word "or" and
18 I'm going to take the U-N in front of unreasonable, and those
19 are the changes I'm going to make.

20 MR. KITA: And then the same ones in Question 4
21 because it's --

22 THE COURT: And I'll have her retype this before I
23 give it to the jury. I'll make the same changes in Question
24 4.

25 MR. EAST: Very good.

1 THE COURT: Both of you do agree to it?

2 MR. KITA: Yes, Your Honor.

3 THE COURT: Okay. Do you agree to that?

4 MR. THOMAS: I agree, yes, Your Honor.

5 THE COURT: I'm glad y'all agree on something.

6 Here, do you want this back?

7 MR. KITA: Oh, yeah. Here, I'll take it from you.

8 *(In the hearing of the jury, as follows:)*

9 THE COURT: Okay. Now I'm going to read the verdict
10 form. It's longer than the last one, so y'all be patient with
11 me.

12 It's called, Verdict of the Jury, and it says:

13 We, the jury, return our answers to the following
14 questions as our verdict in this case.

15 Question Number 1: Do you find from a preponderance
16 of the evidence that while participating in the detention of
17 Jermaine Darden defendant W.F. Snow used excessive force?

18 You are instructed that in answering Question Number
19 1, you will be guided by the following explanations and
20 instructions:

21 For you to answer "yes" to Question Number 1, you
22 must find that each of the following three elements has been
23 established by a preponderance of the evidence:

24 First element: An injury.

25 The second element: That such injury resulted

1 directly and only from the use by W.F. Snow of force that was
2 clearly excessive.

3 And the third element is: That the excessiveness of
4 the force used by W.F. Snow was clearly unreasonable.

5 Now, there's a separate issue for Officer Snow, and
6 then there will be a separate one for Officer Romero, and what
7 I'm doing now is talking about the Officer Snow issue.

8 You are instructed that in deciding whether the
9 second and third elements have been established by a
10 preponderance of the evidence, you are to consider the
11 following additional instructions.

12 And I'm going to remind you what those two elements
13 are. The second element is that such injury resulted directly
14 and only from the use by W.F. Snow of force that was clearly
15 excessive, and the third element is that the excessiveness of
16 the force used by W.F. Snow was clearly unreasonable.

17 Now, I'm going to continue on with the instructions:

18 You are instructed that in deciding whether the
19 second and third elements may have been established by a
20 preponderance of the evidence, you are to consider the
21 following additional instructions:

22 Officers executing a search warrant for contraband
23 have the authority to detain the occupants of the premises
24 while a proper search is being conducted. Such detentions are
25 appropriate because the character of the additional intrusion

1 caused by detention is slight and because the justifications
2 for detention are substantial.

3 The detention of an occupant is less intrusive than
4 the search warrant -- search itself, and the presence of a
5 warrant assures that a neutral magistrate has determined that
6 the probable -- that a probable cause exists to search the
7 home.

8 Against this incremental intrusion, there are three
9 legitimate law enforcement interests that provide substantial
10 justification for detaining an occupant:

11 Preventing flight in the event incriminating
12 evidence is found; minimizing the risk of harm to the
13 officers; and facilitating the orderly completion of the
14 search.

15 You must carefully balance the nature and quality of
16 the intrusion by W.F. Snow on Jermaine Darden to be protected
17 from excessive force against the government's right to use
18 some degree of physical coercion or threat of coercion to
19 detain Jermaine Darden. Not every push or shove, even if it
20 may later seem unnecessary in hindsight, constitutes excessive
21 force.

22 You must pay careful attention to the facts and
23 circumstances, including the severity of the crime that led to
24 the entry of the officers into the residence on the occasion
25 when the officers attempted to detain Jermaine Darden, whether

1 Jermaine Darden posed an immediate threat to the safety of
2 W.F. Snow or others, whether W.F. Snow reasonably perceived
3 that Jermaine Darden posed an immediate threat to the safety
4 of W.F. Snow or others, whether Jermaine Darden was actively
5 resisting or attempting to evade detention, and whether W.F.
6 Snow reasonably perceived that Jermaine Darden was actively
7 resisting or attempting to evade detention. The drug offense
8 that led to the issuance of the no-knock search warrant was a
9 serious crime.

10 Finally, the reasonableness of a particular use of
11 force is based on what a reasonable officer would do under the
12 circumstances and not on the state of mind of W.F. Snow or
13 Jermaine Darden. You must decide whether a reasonable officer
14 on the scene would view W.F. Snow's use of force as reasonable
15 without the benefit of 20/20 hindsight.

16 That inquiry must take into account the fact that
17 police officers are sometimes forced to make split-second
18 judgments in circumstances that are tense, uncertain, and
19 rapidly evolving about the amount of force that is necessary
20 in a particular situation.

21 If you find that the force used by W.F. Snow was
22 used by him because Jermaine Darden was actively resisting
23 detention when the force was used, or because W.F. Snow
24 reasonably perceived that Jermaine Darden was actively
25 resisting detention when the force was used; or, if you find

1 that Jermaine Darden did not comply with the commands of W.F.
2 Snow or other officers, or that W.F. Snow reasonably perceived
3 that Jermaine Darden did not comply with the commands of W.F.
4 Snow and other officers, as W.F. Snow and the other officers
5 were attempting to detain him, you must take those facts into
6 account in determining whether the force W.F. Snow used was
7 excessive and whether the force was unreasonable. You must
8 also consider whether a detainee is not actively resisting
9 arrest, the degree of force the officer can be used -- let me
10 read that sentence over again.

11 You must also consider that when a detainee is not
12 actively resisting detention, the degree of force an officer
13 can use is reduced.

14 What would ordinarily be considered reasonable force
15 does not become excessive force when the force aggravates,
16 however severely, a preexisting condition, the existence and
17 extent of which would not -- would have been unknown to a
18 reasonable police officer, situated as W.F. Snow was at the
19 time.

20 And then it has a place for you to answer that first
21 question. All of those instructions I've given you were
22 instructions related to the question asking whether -- do you
23 find from a preponderance of the evidence while participating
24 in the detention of Jermaine Darden defendant W.F. Snow used
25 excessive force? And the explanations and instructions I've

1 given you, that I've read so far, all pertain to that
2 question.

3 After those instructions, it has a place for an
4 answer. Answer to Question Number 1: It says answer "yes" or
5 "no" and it has a place for an answer, either a yes answer or
6 a no answer. And you can either answer by writing in
7 the -- the foreperson can either answer by writing in a yes or
8 no or simply checking either the yes or no blank.

9 Now, Question Number 2 is identical to Question
10 Number 1, only it asks about Romero. I'm not going to read
11 all that because it's identical. The question is identical,
12 all those instructions are identical that were in Question
13 Number 1, and the way to answer it is the same, so I'm not
14 going to take up your time reading that one, if you don't
15 mind.

16 And then the next -- there are conditions between
17 the questions, and this is a condition to Question Number 3.
18 It tells you what you do beyond -- after you've answered one
19 question, it will tell you what to do after that. If it
20 doesn't tell you what to do, then you just go ahead and answer
21 the next question.

22 The Condition to Question Number 3: If you have
23 answered Question Numbers 1 and 2 -- that's the two questions
24 about the -- whether the defendants used excessive force, and
25 it says, if you have answered Questions Numbers 1 and 2 and

1 your answer to each is no, do not answer any further questions
2 in this verdict form; however, if you have answered Question
3 Number 1 -- and that's the one having to do with Officer
4 Snow -- if you have answered that question "yes," then you
5 answer Question Number 3.

6 And Question Number 3 is: Do you find from a
7 preponderance of the evidence that a reasonable officer could
8 have believed that the force you have found in your answer to
9 Question Number 1 was --

10 Should that be lawful or reasonable?

11 *MR. EAST:* Yes, Your Honor.

12 *THE COURT:* Let me read that question back.

13 Do you find from a preponderance of the evidence
14 that no reasonable police officer could have believed that the
15 force you have found in your "yes" answer to Question Number 1
16 was lawful or reasonable under the circumstances facing W.F.
17 Snow at that time?

18 And the answer to that is yes or no, and there's a
19 place for an answer.

20 And then the Condition to Question Number 4:

21 If you have answered Question Number 2 -- which is
22 the question asking about Romero, whether he used excessive
23 force -- if you have answered that yes, then you answer
24 Question Number 4.

25 And Question Number 4 is: Do you find from a

1 preponderance of the evidence that no reasonable police
2 officer could have believed that the force you have found in
3 your "yes" answer to Question Number 2 was lawful or
4 unreasonable under the circumstances --

5 MR. EAST: Lawful --

6 THE COURT: -- facing J. Romero at the time.

7 MR. EAST: Your Honor, you added the word "un" back
8 in on that last reading.

9 THE COURT: After the word "lawful," I said and?

10 MR. EAST: Lawful or reasonable, and you said lawful
11 or unreasonable.

12 THE COURT: Okay. I misspoke. Let me read that
13 question again. It was the same as Question Number 3, but
14 this time it refers to defendant Romero instead of defendant
15 Snow.

16 Question Number 4: Do you find from a preponderance
17 of the evidence that no reasonable police officer could have
18 believed that the force you have found in your "yes" answer to
19 Question Number 2 was lawful or reasonable under the
20 circumstances facing J. Romero at the time?

21 And then it has a place for an answer, and the
22 answer is yes or no.

23 Then the next condition is ahead of Question Number
24 5. That condition is: If you have answered both Questions
25 Numbers 3 and 4 and your answer to each of them is "no," do

1 not answer any further questions in this verdict form. If you
2 have answered "yes" to Question Number 3, answer Question
3 Numbers 5 and 5(a). If you have answered "yes" to Question
4 Number 4, then answer Question Numbers 6 and 6(a).

5 Question Number 5 is: Do you find from a
6 preponderance of the evidence that such force used by W.F.
7 Snow was the direct and only cause of the death of Jermaine
8 Darden?

9 Let me read that again.

10 Do you find from a preponderance of the evidence
11 that such force used by W.F. Snow was the direct and only
12 cause of the death of Jermaine Darden?

13 And then the instruction below that: You are
14 instructed that in answering Question Number 5, you will be
15 guided by the following explanations and instructions:

16 The fact that preexisting conditions suffered by
17 Jermaine Darden increased his risk of death during the events
18 relating to his detention, or that those conditions
19 contributed to cause his death, does not prevent excessive
20 force used by W.F. Snow from being the direct and only cause
21 of his death, so long as you find from a preponderance of the
22 evidence:

23 One, that a reasonable police officer situated as
24 W.F. Snow was at the time would have known of the existence
25 and extent of those conditions; and two, that Jermaine

1 Darden's death would not have occurred had W.F. Snow used the
2 excessive force, if any, he used as he was participating in
3 the detention of Jermaine Darden.

4 And it has a place for a yes or no answer.

5 And then Question Number 5(a), which is one of the
6 questions you will answer if you -- if you have answered yes
7 to Question Number 3 and 5 -- well, Questions Numbers 3 and 4.
8 If you have answered "yes" to Questions Numbers 3 and 4,
9 you'll answer Question Number 5.

10 Do you find from a preponderance of the evidence
11 that such force used by J. Romero was the direct and only
12 cause of the death of Jermaine Darden?

13 And I give the same instructions there that I give
14 following the question asking about whether the excessive
15 force, if any, used by Snow was the direct and only cause of
16 the death.

17 It's: You're instructed that in answering Question
18 Number 6, you will be guided by the following explanations and
19 instructions:

20 The fact that preexisting conditions suffered by
21 Jermaine Darden increased his risk of death during the events
22 related to his detention, or that those conditions contributed
23 to cause his death, does not prevent excessive force used by
24 J. Romero from being the direct and only cause of the death,
25 so long as you find from a preponderance of the evidence that

1 a reasonable police officer situated as J. Romero was at the
2 time -- that time, would have known of the existence and
3 extent of those conditions; and, two, that Jermaine Darden's
4 death would not have occurred had J. Romero not used the
5 excessive force, if any, he used as he was participating in
6 the detention of Jermaine Darden.

7 Then it has a place to answer that question yes or
8 no.

9 Then the next question doesn't have a condition:

10 Do you find from a preponderance of the evidence
11 that J. Romero knew or should have known of the existence and
12 extent of Jermaine Darden's preexisting condition?

13 And it has a place for a yes or no answer.

14 Then the next condition precedes Question Numbers 7
15 through 12, and it's a condition to questions -- Question
16 Numbers 7-12, and the condition is:

17 If you have answered both Question Numbers 5 and 6,
18 and your answer to each is "no," you will not answer Question
19 Numbers 7 through 12, but you will go to and answer Question
20 Numbers 13 and 14.

21 *MR. KITA:* Judge, can I interrupt you briefly?

22 *THE COURT:* Pardon?

23 *MR. KITA:* May I approach, please? Can we have a
24 conference?

25 *THE COURT:* I'm sorry, did I misspeak? Did I

1 misread something?

2 MR. KITA: You didn't misspeak. I just caught
3 another thing I would like to bring to your attention.

4 THE COURT: Well, let me read that condition -- the
5 condition is what I misread?

6 MR. KITA: No, it was on 5 and 6.

7 THE COURT: What?

8 MR. KITA: It was on 5 and 6, and I don't think you
9 misread it. I think we need to address something.

10 THE COURT: Come up here and tell me what you say
11 I've misread.

12 *(Bench conference on the record, out of the hearing*
13 *of the jury, as follows:)*

14 THE COURT: Show me what I misread.

15 MR. KITA: It's not --

16 THE REPORTER: I need you in the mic.

17 MR. KITA: The first question says to recover for
18 excessive force, we have to show the injury or causation and
19 then the -- the 5 and 6 both use the word "death" not injury.
20 I think that needs to be injury or death or --

21 MR. EAST: This precedes the wrongful death damages
22 only, Number 7.

23 THE COURT: We have -- way on over there, we have
24 injury as a separate --

25 MR. EAST: These are --

1 THE REPORTER: I can't hear you.

2 MR. KITA: Thank you, Your Honor.

3 THE COURT: Are you satisfied I didn't misread
4 anything?

5 MR. KITA: You did not misread it.

6 THE COURT: Thank you.

7 *(In the hearing of the jury, as follows:)*

8 THE COURT: I think I read 6(a). I was reading the
9 condition to Question Numbers 7 and (sic) 12.

10 If you have answered both Questions 5 and 6 and your
11 answer to each is "no," you will not answer Question Numbers 7
12 through 12, but you will go to and answer Question Numbers 13
13 and 14.

14 Now, because of the possibility you will answer
15 Questions 7 through 12, I'm going to read those.

16 Question Number 7 is: Find from a preponderance of
17 the evidence what sum of money, if any, paid now in cash,
18 would fairly and reasonably compensate the estate of Jermaine
19 Darden for the reasonable amount of expenses for the funeral
20 and burial of Jermaine Darden in a manner reasonably suitable
21 to his situation in life.

22 Then it has a place for an answer, and the
23 instruction about the answer is:

24 Answer in dollar and cents, if any, or none, as you
25 find from a preponderance of the evidence.

1 Then it has a place to put a dollar amount after the
2 words "funeral and burial expenses, if any."

3 Then Question Number 8: Do you find from a
4 preponderance of the evidence that one or more of the persons
5 named below suffered damages by reason of the death of
6 Jermaine Darden?

7 And those persons listed are: Harriet Darden,
8 Daylin Darden, Dashawn Darden, Donneika Darden, those persons.

9 Then the next instruction is:

10 You are instructed in answering Question Number 8,
11 you will be guided by the following explanations and
12 instructions:

13 The word "damages," as used in Question Number 8,
14 includes, and is limited to, the following elements. You will
15 consider none other than answering -- none other in answering
16 the question.

17 And those elements are:

18 One: Pecuniary loss, which means the past or future
19 loss of care, maintenance, support, service, advice,
20 counsel, and reasonable contributions of pecuniary value,
21 including (sic) any possible loss of inheritance that the
22 person that you were considering, in reasonable probability,
23 would have received in the past and would have received in the
24 future from Jermaine Darden had Jermaine Darden not died when
25 he did.

1 Number two: Loss of companionship and society,
2 which means the past or future loss of the positive benefits
3 flowing from the love, comfort, companionship, and society
4 that the person that you are considering, in reasonable
5 probability, would have received in the past or would have
6 received in the future from Jermaine Darden had Jermaine
7 Darden not died when he did.

8 And the third element is mental anguish, which means
9 the past or future emotional pain, torment, or (sic) suffering
10 that the person you are considering suffered in the past or
11 will suffer in the future because of the death of Jermaine
12 Darden.

13 Then it has a place to answer below that, and the
14 answer will be yes or no as to each of those persons, that is,
15 Harriet Darden, Daylin Darden, Dashawn Darden, and Donneika
16 Darden, and it has a yes or no answer as to each of them.

17 The instruction is: Answer "yes" or "no" as to each
18 such person as you find from a preponderance of the evidence.

19 And I need to remind you what the question is:

20 Do you find from a preponderance of the evidence
21 that one or more of the persons named below suffered damages
22 by reason of the death of Jermaine Darden?

23 And the answer to the question has a yes or no as to
24 each of those persons, and the instruction is that you'll
25 answer yes or no as to each of those persons as you find from

1 a preponderance of the evidence. In other words, whatever you
2 find, yes or no, you'll answer it.

3 Then there's a condition to Question Numbers 9
4 through 12.

5 If you have answered question numbers -- question --
6 if you have not answered -- let me back up.

7 If you have not answered "yes" to any person named
8 in Question Number 8, you do not answer -- you need not answer
9 any of the Question Numbers 9 through 12, but instead you will
10 go to and answer Question Number 13. Otherwise, you will
11 answer the question or questions in Questions Numbers 9
12 through 12 that match up to the person or persons as to whom
13 you have answered "yes" in Question Number 8.

14 That is, those four persons. Each one of those
15 persons you answered "yes" as to in Question Number 8, then
16 you answer the comparable question in 9 through 12. And the
17 questions in 9 through 12 are identical -- well, let me go
18 ahead and read -- these are explanations as to the Questions
19 Numbers 9 through 12.

20 The next series of questions numbers -- Question
21 Numbers 9-12 requires that you find from a preponderance of
22 the evidence the amount of damage, if any, each of the persons
23 named in Question Number 8 as to whom you have answered "yes"
24 has suffered as to each of the elements of damage mentioned in
25 that question.

1 You are instructed that any monetary recovery by
2 these persons for pecuniary loss is subject to federal income
3 taxes, and that any recovery by any of those person for loss
4 of society or companionship or mental anguish is not subject
5 to federal income taxes. You will not duplicate any amount in
6 your answer to any question that was included in your answer
7 to any other question, nor would you include any amount that
8 represents a funeral or burial expense.

9 And the condition to Question Number 9:

10 If you have answered "yes" to Question Number 8 as
11 to Harriet Darden, answer Question Number 9; otherwise, do not
12 answer Question Number 9, but go to Question Number 10.

13 Question Number 9: Do you find from a preponderance
14 of the evidence -- let me start that one over again.

15 Find from a preponderance of the evidence what sum
16 of money, if any, if now paid in cash, would fairly and
17 reasonably compensate Harriet Darden for her damages, if any,
18 resulting from the death of Jermaine Darden.

19 And the instructions under that is: You will be
20 guided by the following instructions -- explanations and
21 instructions in answering Question Number 9:

22 In determining the damages, if any, of Harriet
23 Darden, you may consider the health and life expectancy of
24 Jermaine Darden, the relationship between Jermaine Darden and
25 Harriet Darden, their living arrangements, Jermaine Darden's

1 occupation and earnings history, any extended absence from one
2 or another -- one another, the harmony of their family
3 relations, and their common interests and activities, if any.

4 Consider the elements of damage listed below and
5 none other. Those elements of damage are defined in the
6 instructions and explanations in Question Number 8. Consider
7 each element separately. Do not award any sum of money for
8 any element if you have otherwise, under some other element,
9 awarded the sum of money for the same loss, that is, do not
10 compensate twice for the same loss, if any. Do not include
11 interest on any amount of damage you find.

12 And then Question Number 9:

13 Answer separately as to each element of damages in
14 dollars and cents, if any, or "none," as you find from a
15 preponderance of the evidence.

16 1. Pecuniary loss, if any, in the past and future.

17 And a dollar mark blank for the dollar amount, if
18 any.

19 The number 2: Loss of companionship and society, if
20 any, in the past and future.

21 And has a dollar amount there, if any.

22 And then the next is number 3: Mental anguish, if
23 any, in the past and in the future.

24 And has a dollar amount.

25 Now, that question pertained to Harriet Darden. If

1 the jury had answered "yes" in Question Number 8 to Harriet
2 Darden, that was the question that they would next answer as
3 to her.

4 There's an identical question, Number 10, with the
5 same instructions and the same -- exactly the same form of
6 answer as to Daylin Darden, and then question number -- well,
7 Question Number 10 -- well, Question Number 10 is identical as
8 to Daylin Darden, both with the condition of the question and
9 the form of answer.

10 And then Question Number 11 is identical with the
11 same condition, question, instructions, and form of answer
12 pertaining to Dashawn Darden.

13 And then Question Number 12 is identical as to the
14 condition, the wording of the question, and the instructions,
15 and the form of answer as to Donneika Darden.

16 Then Question Number 13 -- I think I instructed you
17 sometime back you wouldn't answer Questions 7 through 12 under
18 some circumstances, you would go directly to 13. And if you
19 were guided by those instructions and had not terminated
20 pursuant to an earlier instruction, this is where you would
21 go, Question Number 13, and the question is:

22 Do you find from a preponderance of the evidence
23 that Jermaine Darden experienced physical pain or mental
24 anguish before his death as a direct result of the force, if
25 any, used by W.F. Snow while participating in the detention of

1 Jermaine Darden, that you found was excessive in your answer
2 to Question Number 1?

3 In other words, it's limited to the force you found
4 was excessive.

5 And then the instructions that go with this question
6 are:

7 You are instructed that in answering Question Number
8 13, you will be guided by the following explanations and
9 instructions:

10 You are instructed that the term "physical pain"
11 means the conscious physical pain, if any, experienced by
12 Jermaine Darden before his death as a result -- direct result
13 of the force, if any, used by W.F. Snow while participating in
14 the detention of Jermaine Darden, that you have found was
15 excessive in your answer to Question Number 1.

16 Continuing on with the instruction:

17 You are instructed that the term "mental anguish"
18 means the emotional pain, trauma, and suffering, if any,
19 experienced by Jermaine Darden as a direct result of the
20 force, if any, used by W.F. Snow while participating in the
21 detention of Jermaine Darden, that you have found was
22 excessive in your answer to Question Number 1.

23 Continuing on with the instructions:

24 The fact that a preexisting -- that preexisting
25 conditions suffered by Jermaine Darden contributed to cause

1 him to experience physical pain and mental anguish before his
2 death did not prevent the excessive force, if any, used by
3 W.F. Snow from being a direct cause of such physical pain or
4 mental anguish, if any, he suffered prior to his death, so
5 long as you find from a preponderance of the evidence: One,
6 that a reasonable police officer situated as W.F. Snow was at
7 the time would have known of the existence and extent of those
8 conditions; and, two, that such physical pain and mental
9 anguish would not have occurred had W.F. Snow not used the
10 excessive force, if any, he used as he was participating in
11 the detention of Jermaine Darden.

12 And then I have a place for an answer: Answer yes
13 or no as you find from a preponderance of the evidence.

14 Now, the Question Number 14 that follows that is an
15 identical question to Number 13 that pertains to J. Romero.
16 The instruction is the same, the question is the same, and the
17 form of answer is the same. I don't think there's anything to
18 gain by me reading that again, so I'm just telling you that
19 that Question Number 14 is identical to Question Number 13,
20 the instructions are the same as in Question 13, and the form
21 of answer is the same as Question Number 13. I've already
22 read that, so I don't think you need to read it again.

23 The next question is Question Number 15:

24 If you have answered question -- you have answered
25 "yes" to Question Number 13, answer Question Number 15;

1 otherwise, do not answer Question Number 15, but go to and
2 answer Question Number 16.

3 As a reminder, Question Number 13 was the one asking
4 about whether Jermaine Darden suffered pain and suffering as a
5 result of the excessive force you found in Question Number 1
6 against defendant Officer Snow.

7 The Question Number 15 is:

8 Find from a preponderance of the evidence what sum
9 of money, if any, now paid in cash, would fairly and
10 reasonably compensate the estate of Jermaine Darden for
11 damages Jermaine Darden suffered prior to his death by reason
12 of his physical pain or mental anguish, if any, directly
13 caused by the excessive force you have found in your answer to
14 Question Number 1 that W.F. Snow used as he was participating
15 in the detention of Jermaine Darden.

16 And there are some instructions that go with that.

17 You are instructed that in answering Question Number
18 15, you will be guided by the following explanations and
19 instructions:

20 You will include in your answer to Question Number
21 15 only the amount you find from a preponderance of the
22 evidence that Jermaine Darden suffered by reason of mental
23 pain -- of pain and mental anguish directly caused by the
24 excessive force you have found in your answer to Question
25 Number 1 that W.F. Snow used as he was participating in the

1 detention of Jermaine Darden.

2 You will not include in your answer to Question
3 Number 15 any amount of damages Jermaine Darden suffered prior
4 to his death by reason of pain or mental anguish caused by any
5 other police officer -- any other police officer as Jermaine
6 Darden was being detained.

7 The fact that preexisting conditions suffered by
8 Jermaine Darden contributed to cause him to experience
9 mental -- pain and mental anguish before his death did not
10 prevent the force used by W.F. Snow from being a direct cause
11 of such pain and mental anguish, if any, he suffered prior to
12 his death, so long as you find from a preponderance of the
13 evidence (1) that a reasonable police officer situated as W.F.
14 Snow was at the time would have known of the existence and
15 extent of those condition; and (2) that such pain and mental
16 anguish would not have occurred had W.F. Snow not used the
17 excessive force, if any, he used as he was participating in
18 the detention of Jermaine Darden.

19 Now, the next question is Number 15.

20 Answer separately in dollars and cents, if any, as
21 you -- as to each element of damage or "none" as you find from
22 a preponderance of the evidence.

23 And then this is the question asking how much would
24 reasonably compensate Dwayne (sic) Darden -- the estate of
25 Dwayne Darden for damages, if any, he suffered prior to his

1 death by reason of the excessive force, if any, you have found
2 W.F. Snow used in detaining Jermaine Darden.

3 And there's a place for an answer to that question
4 in the verdict form.

5 Answer separately in dollars and cents, if any, as
6 to each element of damage or "none" as you find from a
7 preponderance of the evidence, and then it has a place to put
8 a dollar amount for physical pain, if any, and a dollar amount
9 for mental anguish, if any.

10 Now, Question Number 16 is conditioned on a "yes"
11 answer to Question Number 14; otherwise, you don't answer
12 Question Number 16.

13 Question Number 14 is the one asking about the
14 conduct of defendant Romero and whether or not that caused
15 physical pain or mental anguish, if there was any excessive
16 force used by him.

17 The Question Number 16 -- you don't answer 17,
18 unless you've answered "yes" to 16 -- I mean, to 14, I'm
19 sorry.

20 And 16, the question pertains to J. Romero, asking
21 about the amount of money that would compensate the estate of
22 Jermaine Darden based on any physical pain and mental anguish
23 Jermaine Darden suffered as a result, if any, of the excessive
24 force you found against Jermaine Darden -- I mean, Romero,
25 Javier Romero, if you found any in answer to Question Number

1 2.

2 Question Number 16 is exactly the same as the
3 question that asked about the amount of money that would
4 compensate Jermaine Darden's estate for the conduct of -- pain
5 and suffering resulting from the conduct, excessive force
6 conduct, of defendant Snow. It's exactly the same question,
7 exactly the same instructions, and exactly the same form of
8 answer.

9 Now, Question Number 17 is:

10 If you have answered Question Number 15 by a dollar
11 amount as to either element of damage, answer Question 17.

12 And Question 15 was the one asking about whether
13 Dwayne Darden -- asking about whether the damages, if any,
14 suffered by the estate of Mr. Darden, Mr. Snow was responsible
15 for, if any, by reason of any excessive force he used, and
16 this is asking the same question as to Mr. Romero.

17 If you have answered Question Number 15 by a dollar
18 amount as to -- that was as to Mr. Romero -- as to each
19 element -- as to each element of damage, answer Question
20 Number 17; otherwise, do not answer Number 17, but go to
21 answer Question Number 18.

22 Let me restate that.

23 It's: If you have answered Question Number 15 as to
24 a dollar amount as to either element of damage, answer
25 Question Number 17; otherwise, do not answer Question Number

1 17, but go to Question Number 18.

2 Question Number 17 is:

3 Do you find from a -- by clear and convincing
4 evidence that punitive damages should be assessed against W.F.
5 Snow and awarded to the estate of Jermaine Darden because of
6 the harm Jermaine Darden suffered by reason of the excessive
7 force on the part of W.F. Snow you have found in your answer
8 to Question Number 17 (sic)?

9 And the instructions that go with this:

10 You are instructed that in answering Question Number
11 17, you will be guided by the following explanations and
12 instructions:

13 Clear and convincing evidence is evidence that
14 produces in your mind a firm -- a firm belief or conviction as
15 to the matter in issue. This involves a greater degree of
16 persuasion than is necessary to meet the preponderance of the
17 evidence standard; however, proof to an absolute certainty is
18 not required.

19 The purpose of punitive damages is to punish and
20 deter, not to compensate. Punitive damages serve to punish a
21 defendant for malicious or reluctant -- reckless conduct, and,
22 by doing so, do deter others from engaging in similar conduct
23 in the future. You are not required to award punitive
24 damages, but if you decide to award punitive damages, you must
25 use sound reason in setting the amount.

1 Punitive damages should be awarded only if a
2 defendant's conduct is so reprehensible as to warrant the
3 imposition of extra sanctions against a defendant to achieve
4 punishment or deterrence.

5 And it has a question -- place for a yes or no
6 answer below that.

7 Question Number 18 has a condition, and it's
8 conditioned on a "yes" answer to Question Number 17.

9 And the question is:

10 What sum of money, if any, should be assessed
11 against W.F. Snow and awarded to the estate of Jermaine Darden
12 as punitive damages for the harm Jermaine Darden suffered by
13 reason of the excessive force on the part of W.F. Snow that
14 you have found in answer to Question Number 1?

15 And the instructions that go with that is that:

16 You are instructed that in answering Question Number
17 18, you will be guided by the following instructions --
18 explanations and instructions:

19 You will take into account and be guided by the same
20 explanations and instructions you were given in the last
21 paragraph of the explanations and instructions contained in
22 Question Number 17.

23 Factors to be considered in awarding community (sic)
24 damages are:

25 1. The nature of the wrong, if any.

1 The character of the conduct involved.

2 3. The degree of culpability of W.F. Snow.

3 4. The situation and sensibilities of the parties
4 concerned.

5 5. The extent to which such conduct of W.F. Snow
6 offends the public sense of justice and propriety.

7 6. The net worth of W.F. Snow.

8 And then there's a question for the answer:

9 Answer in dollars and cents, if any, or "none" and
10 it has a blank space following the words "punitive damages, if
11 any."

12 Now, Questions Number 19 and 20 are identical to 17
13 and 18, the questions, the condition, the explanations, so on,
14 except this time they pertain to defendant Romero, Officer
15 Romero, and they are asking first if punitive damages should
16 be awarded, assessed against defendant Romero, and, if so, how
17 much.

18 And that's the end of the verdict form. Whew.

19 Anybody got any questions?

20 (Laughter)

21 THE COURT: I didn't mean that. Y'all come -- one
22 of you come up here.

23 (Bench conference on the record, out of the hearing
24 of the jury, as follows:)

25 THE COURT: Does the plaintiff have any objection to

1 the verdict form as I've read and explained it to the jury,
2 beyond those objections that were made in writing by the
3 plaintiff to the various versions of the verdict form that I
4 attached to an order from time to time?

5 MR. KITA: No objections, other than the ones we've
6 already made.

7 THE COURT: Those that you were talking about that
8 were made in writing?

9 MR. KITA: Yeah.

10 THE COURT: And does the -- do either defendant have
11 any objection to the wording or -- about the verdict form or
12 the way I've explained it to the jury?

13 MR. EAST: Same response, Your Honor. No
14 objections, other than those already provided.

15 THE COURT: In the objections to the various forms
16 of verdict that I've attached to various orders?

17 MR. EAST: Yes, Your Honor.

18 THE COURT: Okay. That's all.

19 *(In the hearing of the jury, as follows:)*

20 THE COURT: I don't think y'all want to reach a
21 verdict tonight. If you do, everybody raise your hand. I
22 don't see any hands on that.

23 I'll see y'all at the 9:00 in the morning.

24 COURT SECURITY OFFICER: All rise.

25 *(Jury not present)*

1 THE COURT: I'll see y'all at 9:00 in the morning.

2 MR. KITA: Thank you, Judge.

3 MR. EAST: Thank you, Your Honor.

4 THE COURT: Oh, let me do one other thing before the
5 lawyers leave.

6 I want to be sure I have an accurate list of the
7 exhibits that have been received in evidence because we're
8 going to have to put together all the exhibits and take them
9 to the jury room, so I want to be sure I have an accurate
10 list.

11 I'm going to first go over the plaintiff's exhibit
12 list -- I mean, the plaintiff's exhibits, the ones I show
13 that -- okay.

14 Okay. Somebody follow along with what I'm doing, so
15 I'll know I have an accurate list. These are the list of
16 exhibits that I show the plaintiff offered and were received:
17 1, 4, 7, 10, 11, 22, 24, 48 --

18 MR. EAST: Your Honor --

19 THE COURT: Let me do it, and then you tell what
20 I've overlooked.

21 The next one is 72.

22 Okay. That's what I show as being plaintiff's
23 exhibits that were offered and received.

24 MR. EAST: Did you say -- did you say 48, Your
25 Honor?

1 THE COURT: Let me read it again, so there won't be
2 any misunderstanding: 7, 10, 11, 22, 24, 49, 72, 138. I show
3 those as being the exhibits the plaintiff offered and were
4 received.

5 Anybody disagree with that?

6 MR. KITA: It matches up with mine, Judge.

7 THE COURT: Pardon?

8 MR. EAST: I think we agree, Your Honor.

9 THE COURT: Are you saying you agree?

10 MR. EAST: Yes, Your Honor.

11 MR. KITA: Yes.

12 THE COURT: Both of you agree?

13 MR. KITA: On that, yes. Those are the ones
14 plaintiff offered and received, yes.

15 THE COURT: Okay. I've called off the right numbers
16 of the exhibits the plaintiff offered and has received; is
17 that correct?

18 MR. WASHINGTON: Yes.

19 THE COURT: Okay. Both sides agree to that.

20 I'm going to call off now the exhibits the defendant
21 offered and were received, so follow me as I do this.

22 MR. WASHINGTON: Your Honor, just one interruption.
23 I think you may have called out the entire list of all the
24 exhibits.

25 MR. EAST: No, he didn't.

1 MR. WASHINGTON: 138 wasn't one of our exhibits.

2 MR. EAST: Okay. Mr. Washington says 138 was
3 originally a defense exhibit. He's right, but we admitted it
4 by agreement early during his case, so I don't know how we --

5 MR. WASHINGTON: That's fine. That's fine.

6 THE COURT: Okay. These are the exhibits that
7 defendant offered and were received: 94, 97, 100, 108, 109,
8 112, 114, 119, 120, 123, 124, 137, and 144, and 145.

9 MR. KITA: What about Exhibits 1 and 4, Judge?

10 THE COURT: Pardon?

11 MR. KITA: Exhibits 1 and 4? Did you say that
12 earlier?

13 MR. EAST: You didn't say it on the second reading a
14 moment ago, but you said it on your first reading, yes.

15 THE COURT: Do you want me to go over, again, the
16 ones I find as the defendant's exhibits that were offered and
17 received?

18 MR. EAST: Your Honor, if you don't mind doing the
19 entire list, irrespective of who offered.

20 THE COURT: Well, I can do that, but let's deal with
21 one thing at a time.

22 I want to find out if I've accurately described the
23 exhibits the defendant offered and received.

24 MR. EAST: Yes, Your Honor.

25 THE COURT: Are you not able to do that? Do you not

1 have a list that would enable you to do that? I'm sure your
2 cocounsel has such a list.

3 Do you have such a list?

4 *MR. EAST:* I have one.

5 *MR. THOMAS:* Yes, Your Honor. It's probably not any
6 more accurate than his, however.

7 *THE COURT:* Mr. East, let me ask you: Did you not
8 keep a list of your exhibits that you -- were offered and
9 received?

10 *MR. EAST:* Yes, Your Honor, but in the heat of the
11 moment, there may have been a few that I missed, so --

12 *THE COURT:* Well, are you telling me you don't have
13 a way to separate the plaintiff's exhibits from the
14 defendant's exhibits? I'm trying to figure out what your
15 problem is.

16 *MR. KITA:* The problem is we have them in a big long
17 list, all consecutively numbered, and we have been checking
18 them off as we go, but when you were reading them, we were
19 trying to check them off and flip pages, so --

20 *THE COURT:* Do you want me to read the defendant's
21 exhibits slower?

22 *MR. WASHINGTON:* The entire list, Your Honor, just
23 the entire list that you have.

24 *THE COURT:* Okay. And then I'm going to find out --
25 y'all want them read separately as to plaintiff's and

1 defendant's. I've already established that I have accurately
2 read the plaintiff's exhibits.

3 I'm going to read the defendant's exhibits, and I
4 want somebody out there to pay enough attention to what I'm
5 reading to tell me if I've read it correctly.

6 I show the defendant's exhibits are 94 -- I'll go
7 slow -- 97, 100, 108, 109, 112, 114, 119, 120, 123, 124, 137,
8 144, 145.

9 Have I read accurately the exhibits the defendant
10 offered and were received, Mr. East?

11 *MR. EAST:* Yes, Your Honor.

12 *MR. THOMAS:* Yes, Your Honor, I agree with that
13 also.

14 *THE COURT:* Pardon?

15 *MR. THOMAS:* I also agree.

16 *THE COURT:* You agree with what I've read as being
17 accurate?

18 *MR. KITA:* For the defendants, yes.

19 *THE COURT:* Okay. Now, let's -- somebody put all
20 those exhibits together.

21 *MR. WASHINGTON:* And they are. They are all
22 combined now.

23 *MR. EAST:* Your Honor, I apologize, but I think 125
24 was offered and admitted.

25 *MR. KITA:* Yeah, it's in here because I saw it. The

1 other one is 17.

2 MR. EAST: Was 125 on your list, Your Honor?

3 THE COURT: I don't show that it was admitted. I
4 have a check mark by it, which indicates that I intended to.
5 I don't show that it was admitted, so we'll ask the court
6 reporter to tell us.

7 Was plaintiff's 125?

8 She says it was admitted, so I'll add 125 as being a
9 defendant's exhibit that was admitted.

10 MR. EAST: Thank you, Your Honor.

11 MR. KITA: The other one, Judge, was 17 admitted?

12 THE COURT: Whoever said 17 was admitted is correct.
13 That's a plaintiff's exhibit. I'm sorry we overlooked that
14 one.

15 MR. KITA: Yeah, I almost missed it, but I think
16 that this book is complete.

17 THE COURT: Okay. Now, have y'all put all the
18 exhibits in one place so we don't give the jury less than the
19 exhibits?

20 Y'all be sure that volume has only the exhibits that
21 are to go to the jury and has all of them in it.

22 MR. EAST: Matthew, is your 4 not here?

23 MR. KITA: 4 is the letters of administration.

24 MR. WASHINGTON: Make sure it's not behind
25 something, Matt.

1 (Counsel conversing at table)

2 MR. EAST: Matt, 70 was the one that he unadmitted
3 because it's a duplicate of the earlier one.

4 MR. KITA: Okay.

5 MR. EAST: So that comes out. I'm almost through my
6 run-through of them. Yep, that matches.

7 MR. WASHINGTON: Do we leave this with you?

8 THE REPORTER: Yes, do that today.

9 MR. KITA: Are we off the record?

10 THE COURT: That's all. I'm telling the court
11 reporter she can go.

12 MR. EAST: Yes, Your Honor.

13 THE COURT: Y'all don't get to approach the bench
14 anymore.

15 MR. EAST: Yes, Your Honor.

16 (Laughter)

17 (End of Proceedings)

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REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 3rd day of August, 2020.

/s/ Debra G. Saenz

DEBRA G. SAENZ, CSR, RMR, CRR
Texas CSR No. 3158
Official Court Reporter
The Northern District of Texas
Fort Worth Division

CSR Expires: 1/31/2022

Business Address: 501 W. 10th Street, Room 424
Fort Worth, Texas 76102

Telephone: 817.850.6661

E-Mail Address: debbie.saenz@yahoo.com

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.024 ounces [1] 202/15	14 [8] 197/21 310/20 312/13 320/14	217 [1] 4/6
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.229 [1] 202/15	145 [10] 6/11 40/25 90/2 90/3 90/13	223 [1] 4/16
.229 ounces [1] 202/15	90/14 90/16 90/17 331/8 333/8	23 [1] 32/12
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